

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v. Plaintiff; Criminal Action  
ROBERT F. McDONNELL and 3:14CR12  
MAUREEN G. McDONNELL, Defendants.

August 11, 2014  
Richmond, Virginia  
9:45 a.m.

JURY TRIAL - VOLUME XI

BEFORE: HONORABLE JAMES R. SPENCER  
United States District Judge

APPEARANCES: MICHAEL S. DRY, ESQ.  
DAVID V. HARBACH, II, ESQ.  
JESSICA D. ABER, ESQ.  
RYAN S. FAULCONER, ESQ.  
Counsel for Government;

JOHN L. BROWNLEE, ESQ.  
HENRY W. ASBILL, ESQ.  
JAMES M. BURNHAM, ESQ.  
DANIEL I. SMALL, ESQ.  
CHRISTOPHER M. IAQUINTO, ESQ.  
OWEN T. CONROY, ESO.

Counsel for Robert F. McDonnell;

WILLIAM A. BURCK, ESQ.  
HEATHER H. MARTIN, ESQ.  
STEPHEN M. HAUSS, ESQ.  
DANIEL KOFFMANN, ESQ.

Counsel for Maureen G. McDonnell.

JEFFREY B. KULL  
OFFICIAL COURT REPORTER

**MARTIN KENT - DIRECT**

2535

1 P-R-O-C-E-E-D-I-N-G-S

2 THE CLERK: Day eleven, Case Number 3:14CR12:  
3 United States of America versus Robert F. McDonnell and  
4 Maureen G. McDonnell. The United States is represented by  
5 Michael Dry, David Harbach, Jessica Aber and Ryan  
6 Faulconer. Robert F. McDonnell is represented by John  
7 Brownlee, Daniel Small, Henry Asbill, James Burnham, and  
8 Christopher Iaquinto. Maureen G. McDonnell is represented  
9 by Heather Martin, William Burck, Stephen Hauss, and  
10 Daniel Koffmann. Are counsel ready to proceed?

11 MR. DRY: The United States is ready to proceed.

12 MR. ASBILL: Mr. McDonnell is ready to proceed.

13 MR. BURCK: Ms. McDonnell is ready to proceed.

14 THE COURT: All right. Let's bring in the jury.

15 (The jury entered the courtroom.)

16 Good morning. All right, government, call your next  
17 witness, please.

18 MR. FAULCONER: Your Honor, the United States  
19 calls Martin Kent.

20 MARTIN KENT,

21 called as a witness by and on behalf of the government,  
22 having been first duly sworn by the Clerk, was examined  
23 and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. FAULCONER:

**MARTIN KENT - DIRECT**

2536

1 Q Good morning.

2 A Good morning.

3 Q Could you please state your name and spell your last

4 for the court reporter?

5 A Martin Kent, K-E-N-T.

6 Q What city do you currently live in?

7 A Bristol, Tennessee.

8 Q Could you briefly tell the jury a little bit about

9 your educational background, Mr. Kent?

10 A I can. I graduated from the University of Richmond

11 and I attended law school at the Mercer University School

12 of Law in Macon, Georgia.

13 Q Where are you currently employed?

14 A At The United Company.

15 Q What is The United Company?

16 A It is a private diversified investment company

17 primarily focused on art, entertainment, and energy.

18 Q Before working at the United Company, where did you

19 work? I worked for Governor Bob McDonnell as his Chief of

20 Staff.

21 Q How long did you work as Mr. McDonnell's Chief of

22 Staff?

23 A Four years.

24 Q Was that the entire Administration?

25 A It was.

**MARTIN KENT - DIRECT**

2537

1 Q Now, before Mr. McDonnell took office as Governor,  
2 where did you work?

3 A I worked at the Office of the Attorney General, and  
4 started working there in 2001.

5 Q By the time that Mr. McDonnell left the Office of the  
6 Attorney General, what was your role?

7 A When he left the Office of Attorney General in 2009  
8 to run for Governor, I was then serving as Chief Counsel  
9 to the Attorney General.

10 Q As Chief Counsel to him while he was Attorney  
11 General, what were your general responsibilities?

12 A Primarily dealing with the General Assembly, dealing  
13 with the Governor's Office, I was a directly liaison to  
14 the Governor's Office, and then representation of state  
15 boards and commissions.

16 Q Now, as Chief of Staff for Mr. McDonnell when he was  
17 Governor, what were your responsibilities then?

18 A They are actually spelled out by an executive order,  
19 Executive Order 3. Primarily, I was the Deputy Budget and  
20 Personnel Officer for the Commonwealth, and I was  
21 responsible for overseeing sort of the daily work of the  
22 Governor's Cabinet.

23 Q Would it be fair to characterize you as sort of the  
24 catch-all guy?

25 A Pretty much, yeah.

**MARTIN KENT - DIRECT**

2538

1 Q As Chief of Staff, who did you report to?

2 A The Governor.

3 Q Given that you reported to him directly, how often  
4 would you say you spoke to him?

5 A There were days we spoke multiple times, and then  
6 when he was traveling there were days that we may  
7 communicate by text message or e-mail, but at least daily  
8 in some communication mode.

9 Q If Mr. McDonnell told you to do something when he was  
10 Governor, would you do it?

11 A Absolutely.

12 Q So was he your boss?

13 A He was my boss, yup.

14 Q I'd like to get a little bit of a sense, we have  
15 heard some testimony about it, but since you were Chief of  
16 Staff, I'd like to get a sense of who else was in the  
17 office and how things were structured. Can you explain  
18 how many Cabinet Secretaries there were?

19 A There were 12 official, and when I say official, the  
20 Governor by executive order also made some appointments  
21 that were Cabinet-level positions, but there were 12  
22 primary Cabinet positions when we started in office.

23 Q All those Cabinet Secretaries, did they have  
24 subordinate staff of their own?

25 A They did.

**MARTIN KENT - DIRECT**

2539

1 Q Do you recognize the name Dr. Bill Hazel?

2 A I do.

3 Q Which Cabinet Secretary was he?

4 A Health and Human Resources.

5 Q Do you recognize the name Molly Huffstetler?

6 A I do.

7 Q Who was Molly Huffstetler?

8 A She worked for Dr. Hazel. We had, early on, actually  
9 it predated the Administration, but the Affordable Care  
10 Act was passed into law and we developed an initiative  
11 called the Health Reform Initiative, which really the  
12 design of that was sort of to oversee Virginia's  
13 implementation of the Affordable Care Act. And she was in  
14 essence the director of that initiative.

15 Q Do you recognize the name Lisa Hicks-Thomas?

16 A I do.

17 Q Who was Lisa Hicks-Thomas?

18 A The Secretary of Administration.

19 Q How about the name Sara Wilson?

20 A I do.

21 Q Who was Sara Wilson?

22 A She was the Director of Human Resource Management.

23 Q Who did Sara Wilson report to?

24 A To Lisa.

25 Q Ms. Hicks-Thomas?

**MARTIN KENT - DIRECT**

2540

1 A Lisa Hicks-Thomas. I apologize.

2 Q Who did she report to?

3 A She reported through me to the Governor.

4 Q Each of these people -- sorry, you have talked a  
5 little bit about Cabinet Secretaries. Could you tell us  
6 the difference between the Cabinet Secretaries and what  
7 sort of is referred to as the Office of the Governor  
8 itself?

9 A Sure. Probably it is easiest to give you sort of a  
10 visual of the way the office is structured at the Patrick  
11 Henry Building. In what we called the pod, which was the  
12 area directly where the Governor's Office was and my  
13 office was, and then immediately on each side of that were  
14 staff members. They could be anything from our  
15 communications shop to our policy and legal shop,  
16 scheduling, anything legislatively-related. Those were  
17 staff members that were sort of contained within the unit  
18 called the Governor's Office. But the Governor's Office  
19 is actually made up of not only those staff members, but  
20 the secretariats which are around the building, so to  
21 speak, at the Patrick Henry Building.

22 Q Now, how did the Mansion staff relate to the  
23 Governor's Office?

24 A The Mansion staff also reported to the Governor's  
25 Office ultimately. But they were sort of self-contained

**MARTIN KENT - DIRECT**

2541

1 at the Mansion. They had offices at the Mansion. They  
2 did not have offices at our office at the Patrick Henry  
3 Building.

4 Q The staff that were at the Mansion, were those state  
5 employees?

6 A They were.

7 Q Would that include Mary-Shea Sutherland and Sarah  
8 Scarbrough?

9 A It did.

10 Q All of those people, including those at the Mansion,  
11 who did they ultimately report to?

12 A Ultimately reported to the Governor.

13 Q Now, in your job, was it also common for some of  
14 those staffers to relay information to you from either  
15 Mr. McDonnell or Ms. McDonnell?

16 A That did happen, yes.

17 Q I'd like to talk a little bit now about sort of what  
18 happened on a routine basis within the office and some of  
19 the Administration's priorities. Based on your  
20 interactions with Mr. McDonnell as his Chief of Staff, and  
21 the things that he asked you to do, can you tell us where  
22 on the Administration's list of priorities the matter of  
23 Virginia business and economic development was?

24 A It was at the top of the list. I would say it was  
25 probably only second to public safety.

**MARTIN KENT - DIRECT**

2542

1 Q During your time in the Administration, how common  
2 was it for Mr. McDonnell to talk about promoting Virginia  
3 business and economic development?

4 A Did it on a daily basis.

5 Q How common was it for your day-to-day work to relate  
6 to furthering those issues?

7 A I did so on a daily basis as well.

8 Q I'd like to take a couple examples about sort of  
9 breaking down how that would work. How common was it for  
10 the Governor's Mansion to host events to promote Virginia  
11 business and economic development?

12 A It was very common. I think staff, long time staff  
13 members at the Mansion had commented to me that we  
14 probably had more events at the Mansion than any other  
15 administration they could recall.

16 Q How common was it for you or other government  
17 employees to participate in planning those events?

18 A It was common.

19 Q Would that include people like Sarah Scarbrough?

20 A It would. Actually, her primary job, or one of her  
21 primary jobs as Mansion Director, was to coordinate that  
22 to send out invitations, to ensure that the bills were  
23 paid. That was one of her main functions, yes.

24 Q When those people had planned those events, as Chief  
25 of Staff, did you expect them to take time off or was it

**MARTIN KENT - DIRECT**

2543

1 official time when they did that?

2 A That was part of their job.

3 Q How common was it for Mr. McDonnell to attend those  
4 types of events?

5 A Very common.

6 Q Was part of your job to try to figure out which event  
7 you should or shouldn't host or which events Mr. McDonnell  
8 should or shouldn't attend?

9 A At the Mansion, I would not say that was my primary  
10 job. We had, it was a little complicated, but to simplify  
11 it, we had a scheduling process where events, invitations  
12 to events outside of really Richmond, but more  
13 specifically, outside of the Governor's Office, or the  
14 Mansion, we had a scheduling process where we would review  
15 those, if we got them in advance, and make a threshold  
16 determination of whether it was something that seemed to  
17 be gubernatorial in nature or something more appropriate  
18 for a Cabinet member or staff member to attend on the  
19 Governor's behalf. But then on occasion there were events  
20 at the Mansion where I may or may not be pulled in, but on  
21 a day-to-day basis I was not pulled into the  
22 decision-making process on the events at the Mansion.

23 That was primarily the Mansion staff that dealt with that.

24 Q Was there a process in place to your awareness as  
25 Chief of Staff for deciding which events to have and not

**MARTIN KENT - DIRECT**

2544

1 to have?

2 A Yes, there was.

3 Q How common was it for other government officials to  
4 attend events at the Mansion and elsewhere?

5 A Very common.

6 Q How common was it for Virginia businesspeople to  
7 attend those events?

8 A Very common.

9 Q How common was it for Ms. McDonnell to attend those  
10 events?

11 A She attended regularly. She did not attend all. If  
12 she was in town and the Governor felt like it was  
13 important for her to be there, she usually made an  
14 appearance.

15 Q Were there times where Mr. McDonnell couldn't attend  
16 an event and a surrogate would be sent instead?

17 A There were.

18 Q Now, with all this process and all these events  
19 potentially on the table, who was it who had the final  
20 authority to decide whether or not an event would make it  
21 onto the calendar or not make it onto the calendar?

22 A Ultimately it was the Governor's call.

23 Q We have talked a little bit about events. I'd like  
24 to talk just a little bit about meetings. How common was  
25 it for Mr. McDonnell to have meetings on his schedule?

**MARTIN KENT - DIRECT**

2545

1 A Very common.

2 Q Was it part of your job to help figure out which  
3 meetings he should and shouldn't attend?

4 A There were meetings that were, yes, filtered through  
5 me and that was part of my job. But there was also sort  
6 of a separate track where we are all extremely busy in the  
7 office. I mean, everyone in the office is really going  
8 24/7. There would be calls that would come in to the  
9 Governor's scheduler, and there would be meetings between  
10 the Governor and the scheduler with certain events and  
11 then there were some that I was pulled into as well. It  
12 was really sort of hit or miss depending on the issue at  
13 hand.

14 Q How common was it for those meetings to relate to  
15 promoting Virginia business and economic development?

16 A Very common.

17 Q How common was it for other Administration officials  
18 like Cabinet Secretaries to attend meetings?

19 A Scheduling meetings or --

20 Q Just meetings in general.

21 A Very common.

22 Q At times, would those Cabinet Secretaries or other  
23 Administration officials attend meetings instead of  
24 Mr. McDonnell?

25 A Yes, routinely.

**MARTIN KENT - DIRECT**

2546

1 Q Now, would one of the types of meetings that  
2 Mr. McDonnell would have on his schedule be Cabinet  
3 meetings with his Cabinet Secretaries?

4 A And that was one of the things that I was responsible  
5 for. We attempted to do that on a weekly basis.

6 Q Would those include at times people like Lisa  
7 Hicks-Thomas and Sara Wilson?

8 A It did.

9 Q Now, when Mr. McDonnell was in meetings like that,  
10 was it common for him to ask his Cabinet officials to do  
11 things?

12 A It was.

13 Q Would that include asking them to look into  
14 something?

15 A Absolutely.

16 Q Would that include asking them to meet with people?

17 A It did.

18 Q Just to be clear, we have talked about meetings a  
19 little bit. Assuming it had nothing to do with an  
20 emergency, like some sort of public safety issue, but they  
21 were talking about a meeting with an outside third party,  
22 would you typically try to give Administration officials  
23 some notice so they could prepare for that meeting?

24 A You tried to. I would say more oftentimes than not  
25 you did. But inevitably, there were times when people

**MARTIN KENT - DIRECT**

2547

1       would call in and, just by the caller, you knew it was  
2       probably an issue of statewide importance and you would  
3       take those sometimes on the fly.

4       Q      How common was it on the spectrum for a meeting to be  
5       arranged on less than 12 hours' notice?

6       A      Not common, but it happened.

7       Q      We talked about meetings and events, so now I'd like  
8       to talk a little bit about interactions with other state  
9       government entities and agencies. In addition to hiring  
10      staff and appointing Cabinet officials, did Mr. McDonnell  
11      also have a role in appointing members of various state  
12      boards and commissions?

13      A      He did.

14      Q      Did that include the Board of Visitors for Virginia  
15      Commonwealth University?

16      A      It did.

17      Q      Could you tell us just sort of generally what the  
18      Board of Visitors is in more common language?

19      A      Sure. Each state university in Virginia, there is a  
20      code section which spells out what the role of the Board  
21      of Visitors would be, but generally speaking, they set  
22      sort of the policy goals and initiatives for the  
23      university. One of the biggest things they do that gets  
24      the most attention is they vote on any tuition increases  
25      which occur at the university. They are designed to set

**MARTIN KENT - DIRECT**

2548

1 sort of the broad policy objectives of the university, and  
2 the President of the university is then to carry out those  
3 goals.

4 Q For Virginia Commonwealth University, did that Board  
5 of Visitors include 16 members?

6 A I believe that's correct. It was certainly more than  
7 12.

8 Q Were all of them appointed by the Governor?

9 A To my knowledge, they were, yes.

10 Q How about the University of Virginia? Was it the  
11 same process for UVA?

12 A Generally speaking, yes.

13 Q Did that Board of Visitors have about 17 people on  
14 it?

15 A That sounds right, yes.

16 Q Did all of those, or were all of those individuals  
17 appointed by Mr. McDonnell?

18 A To my knowledge, yes, they were.

19 Q Or whoever was Governor at the time.

20 A Correct.

21 Q Just to be up front with the jury, just because the  
22 Governor appoints members to the Board of Visitors, does  
23 that mean he controls every last thing that happens at the  
24 university?

25 A No, and particularly in the case of the University of

**MARTIN KENT - DIRECT**

2549

1 Virginia, the Board members sort of jealously guard their  
2 role, and so there is no day-to-day communication with  
3 them about what they should and shouldn't do. However, we  
4 did hold periodic meetings, particularly when new members  
5 were appointed, and give them sort of the things that the  
6 Governor had ran on, the initiatives he promised, an  
7 example being lower tuition. You know, Virginians spoke  
8 loud and clear that they wanted lower tuition at state  
9 schools, and that was an issue we did discuss with them.  
10 But generally speaking, we didn't control their day-to-day  
11 activities, no.

12 Q Regardless of that, if the Governor wants to ask the  
13 Board of Visitors to resign, can he do so?

14 A He can ask them to resign. There is some limitation  
15 in the State Code as to whether he can force them to  
16 resign, but he can certainly always ask them to resign,  
17 yes.

18 Q I'd like to show you what's been marked for  
19 identification as Exhibit 619. Mr. Kent, is this a letter  
20 from Mr. McDonnell to the Board of Visitors of the  
21 University of Virginia?

22 A It does appear to be, yes.

23 Q Is it dated June 22nd, 2012?

24 A It is.

25 Q Does this relate to a controversy surrounding the

**MARTIN KENT - DIRECT**

2550

1 resignation of the UVA President?

2 A Yes, it does appear to.

3 Q Turning just to the last page of this document, is  
4 that Mr. McDonnell's signature at the bottom?

5 A It is.

6 MR. FAULCONER: We would offer Exhibit 619 into  
7 evidence.

8 THE COURT: It will be admitted.

9 BY MR. FAULCONER:

10 Q Now, Mr. Kent, if we could turn back to the first  
11 page briefly. Do you recall actually being involved in  
12 the preparation of this letter?

13 A I do. You know, it wasn't something -- we had a  
14 Secretary of Education and our Secretary of the  
15 Commonwealth that really dealt day in and day out with  
16 board members and education issues. But this was an issue  
17 that got so much attention that I was part of this, yes.

18 Q If we could turn to the third page. Could you read  
19 just the third-to-last paragraph there that starts with  
20 "But let me be absolutely clear..."

21 A It says, "But let me be absolutely clear; I want  
22 final action by the Board on Tuesday. If you fail to do  
23 so, I will ask for the resignation of the entire Board on  
24 Wednesday. Regardless of your decision, I expect you to  
25 make a clear, detailed, and unified statement on the

**MARTIN KENT - DIRECT**

2551

1 future leadership of the University."

2 Q We can take that down. We have talked about VCU and  
3 UVA.

4 A We did.

5 Q Does the Governor, whoever it is at the time, also  
6 appoint individuals who sit on something called the  
7 Tobacco Commission?

8 A He does. That is a bifurcated board that's appointed  
9 in part by the Governor and in part by the legislature.

10 Q Does it have approximately 31 members?

11 A There are over 30. But yeah, that sounds correct.

12 Q Is it accurate that Mr. McDonnell either appoints or  
13 one of his Cabinet secretaries appoints around 20 or so of  
14 those?

15 A That sounds about right, yes.

16 Q The Tobacco Commission, I know that's sort of the  
17 shorthand for it, is it actually called the Virginia  
18 Tobacco Indemnification and Community Revitalization  
19 Commission?

20 A It is. We referred to it, the acronym is TICR.

21 Q T-I-C-R?

22 A Yes.

23 Q I'd like to show you what's been marked for  
24 identification as Exhibit 93. Is this an e-mail from an  
25 individual named Gerard Robinson to you, Tucker Martin,

**MARTIN KENT - DIRECT**

2552

1 and an individual named Kim Steinhoff?

2 A It is.

3 Q Is it dated April 5th, 2011?

4 A It is.

5 Q Who is Gerard Robinson?

6 A Gerard Robinson at the time was Secretary of  
7 Education.

8 Q Who was Kim Steinhoff?

9 A Kim was my executive assistant.

10 MR. FAULCONER: We would offer Exhibit 93 into  
11 evidence.

12 THE COURT: 93?

13 MR. FAULCONER: Yes, 93.

14 THE COURT: All right. It will be admitted.

15 BY MR. FAULCONER:

16 Q Now, Mr. Kent, could you explain just in general  
17 terms what this e-mail is asking for from Gerard Robinson  
18 to you?

19 A It appears that Gerard was asking whether or not the  
20 Governor was interested in writing a letter of support to  
21 the Tobacco Commission for an application for the Virginia  
22 Early Childhood Foundation.

23 Q If we could turn to the second page of the  
24 attachment. Is that actually a draft letter that was sent  
25 over to you?

**MARTIN KENT - DIRECT**

2553

1 A It appears to be, yes.

2 Q We can take that down. Now, Mr. Kent, in your  
3 experience, when interacting with state agencies, your  
4 experience as Chief of Staff, if Mr. McDonnell encouraged  
5 somebody else in state government to do something, would  
6 it typically help or hurt the process?

7 A I would say it helped the process. Definitely helped  
8 the process.

9 Q All right. Now, before we get to Mr. Williams and  
10 Star Scientific, I just have a couple questions about some  
11 things that came up before that. Now, before Mr. Williams  
12 or Star Scientific entered the picture, can you tell us  
13 whether you ever saw a company associated with  
14 Ms. McDonnell try to use Mr. McDonnell's image to promote  
15 a product?

16 A Yes. We had a situation, it was either just before  
17 or just after the Governor had left the Attorney General's  
18 Office to run for Governor, where a company, my  
19 recollection is a company tried to use his likeness to  
20 promote their product, and it came to mine and Jasen  
21 Eige's attention. Jasen was also at the Attorney  
22 General's Office at the time. It came to our attention  
23 through our Consumer Affairs Division at the Office of the  
24 Attorney General.

25 Q After that came to your attention, did you speak to

**MARTIN KENT - DIRECT**

2554

1 Mr. McDonnell about it?

2 A We did.

3 Q Could you tell us how that conversation went?

4 A I believe the Governor had just left to run. I think  
5 I'm right on that. And we brought it to his attention and  
6 asked if he had ever authorized that. And my recollection  
7 is he said he had not. And we asked what he wanted us to  
8 do about it. He said to handle it as we would in the  
9 normal course, which would mean that the Attorney  
10 General's Office, if it was fraudulent or done without the  
11 other person's authorization, then we could take certain  
12 action on their behalf. And so Jasen and myself, we  
13 reached out to the company and said, "You have used a  
14 likeness of the Attorney General," at that time, former  
15 Attorney General, "and it was unauthorized. And if you  
16 fail to take that down, then we will pursue legal action  
17 to do so."

18 Q Now, earlier you said that you worked for  
19 Mr. McDonnell, and I think you were sort of just alluding  
20 to it, not only when he was Governor but also when he was  
21 Attorney General, right?

22 A I did. That's correct.

23 Q Before Mr. McDonnell ran for Governor, did you know  
24 who Jonnie Williams was?

25 A I do not recall ever hearing the name Jonnie Williams

**MARTIN KENT - DIRECT**

2555

1 when he was Attorney General. But candidly, I was not  
2 involved in the political operation of the Attorney  
3 General's Office. I had been at the Attorney General's  
4 Office since 2001, so I started out as a career Assistant  
5 Attorney General and worked my way up through the office.  
6 But no, I had not heard that name before.

7 Q Before Mr. McDonnell ran for Governor, did you know  
8 anything about Star Scientific?

9 A No, I did not.

10 Q Before he ran for Governor, did you know anything  
11 about Anatabloc?

12 A I did not.

13 Q Before the investigation into Mr. McDonnell's  
14 relationship to Mr. Williams sort of broke in the media,  
15 had you ever heard Mr. McDonnell refer to Mr. Williams as  
16 a longtime friend?

17 A No. We had never discussed it.

18 Q And in fact, before sometime in 2011, do you actually  
19 have any specific recollection of meeting Mr. Williams in  
20 person?

21 A I did not. I have only met Mr. Williams one time.

22 Q All right. Let's focus in on late July of 2011. I'd  
23 like to show you what's been already admitted into  
24 evidence as Exhibit 180. Now, do you recognize what type  
25 of e-mail this is? From Katherine Harris, attaching RFM

**MARTIN KENT - DIRECT**

2556

1 schedule.

2 A It appears to be part of the Governor's daily  
3 schedule.

4 Q Was it common for Ms. Harris to send these out to  
5 everybody on the staff?

6 A She sent them out. She actually had two schedules.  
7 She had one schedule that was more detailed that went out  
8 to sort of the senior leadership in the office, and a less  
9 detailed version that went out to others in the office.

10 Q I'd like to turn to the sixth page of this document.  
11 All right, do you see there at 11:30 p.m., sort of at the  
12 end of that day's schedule, where it says, "Home of Jonnie  
13 Williams"?

14 A I do.

15 Q Do you recall Mr. McDonnell and his family  
16 vacationing at Mr. Williams' home at Smith Mountain Lake  
17 in this time frame of late July, 2011?

18 A I do.

19 Q We can take that down. Leave it up for a second,  
20 sorry. At the time of this trip, were you aware that  
21 Mr. Williams had gone on a shopping trip with  
22 Ms. McDonnell in New York City in April of 2011?

23 A I was not.

24 Q At the time of this trip in late July, were you aware  
25 of any loan from Mr. Williams to Mr. or Ms. McDonnell in

**MARTIN KENT - DIRECT**

2557

1 May of 2011?

2 A I was not.

3 Q At the time of this trip, were you aware that  
4 Mr. Williams had paid more than \$2,300 for Mr. McDonnell  
5 and his sons to play golf at Kinloch Golf Club in May of  
6 2011?

7 A I was not.

8 Q I'd like to turn to Page 10 of this document. There  
9 at the bottom where it says, "Depart for Executive  
10 Mansion," what time does it say on this schedule that  
11 Mr. McDonnell was scheduled to leave Smith Mountain Lake  
12 for the Executive Mansion?

13 A It appears to be 7:00 to 7:30 p.m.

14 Q We can take that down. Now, before the McDonnells  
15 went on this trip, did you know anything about  
16 Mr. McDonnell potentially driving Mr. Williams' Ferrari on  
17 that trip?

18 A I did.

19 Q Sorry?

20 A I'm sorry, before or after?

21 Q Before.

22 A Before, no. Sorry, I did not.

23 Q Can you tell us whether, I think we have heard some  
24 about it, Mr. McDonnell would usually drive himself  
25 around?

**MARTIN KENT - DIRECT**

2558

1 A No, the protocol once you become Governor is that the  
2 Executive Protection Unit will transport the Governor and  
3 the spouse wherever they need to go during their term as  
4 Governor.

5 Q Now, after they got back from the trip to Smith  
6 Mountain Lake, did you learn about Mr. McDonnell driving  
7 Mr. Williams' Ferrari?

8 A I did.

9 Q Can you tell us a little bit about how you learned  
10 about that?

11 A It was probably a week or so, the following week  
12 after he had returned, and the Executive Protection Unit's  
13 office, I mentioned previously, sort of the layout of the  
14 office, the Governor's Office and my office, my assistant,  
15 his assistant, are in what is referred to as the pod. It  
16 is sort of a self-contained unit that's within the Patrick  
17 Henry Building. Immediately outside of that pod, that  
18 door to the pod, is the Executive Protection Unit's  
19 office. And there was someone, I'm sure I passed him  
20 going in and out of the hallway, and someone from the  
21 Executive Protection Unit, I believe, brought to my  
22 attention what had happened. And it had had an effect on  
23 some of the members of the Unit.

24 Q What do you mean by that?

25 A I think it had hurt morale. You know, their primary

**MARTIN KENT - DIRECT**

2559

1 job is to protect. And I think from their perspective,  
2 they couldn't protect him if he is driving a vehicle and  
3 they are behind him in their own vehicle.

4 Q After the Executive Protection Unit, somebody in the  
5 Unit, talked to you about this, did you talk to  
6 Mr. McDonnell about it?

7 A I did.

8 Q What did you say?

9 A I went into his office and told him that I understood  
10 that he had driven a sports car, I'm not sure at the time  
11 I knew it was a Ferrari, but that he had driven a sports  
12 car. And I reminded the Governor what the job was or the  
13 duty of the Executive Protection Unit, and I told him that  
14 it had had an impact on the morale of some members of the  
15 Unit, which was very important, and I asked him not to do  
16 it again.

17 Q Do you recall what if anything he said or did in  
18 response?

19 A He didn't say a lot. I don't recall there was any  
20 specific -- he just sort of listened.

21 Q Do you recall any sort of physical reaction or facial  
22 reaction from him?

23 A Yeah, I think he might have smiled when I asked about  
24 the sports car. But, you know, there wasn't a lot of  
25 communication. He heard me. He listened to what I said

**MARTIN KENT - DIRECT**

2560

1 and didn't really push back in any way.

2 Q All right. I'd like to hand up, with the assistance  
3 of the Court Security Officer, what's been marked for  
4 identification as Exhibit 183. This is a 21-page  
5 document, Exhibit 183. Have you had a chance to review  
6 this before coming in to testify here today?

7 A I have.

8 Q And are each of those 21 pages a photograph?

9 A They appear to be, yes.

10 Q Do you recognize what individual is in each one of  
11 those photographs?

12 A It appears to be Governor McDonnell.

13 MR. FAULCONER: We would offer Exhibit 183 into  
14 evidence.

15 THE COURT: It will be admitted.

16 MR. FAULCONER: Your Honor, if we could just  
17 have, with the assistance of Mr. Starnes, just flip  
18 through each page briefly so the jury can see it?

19 THE COURT: All right.

20 (Documents displayed to jury.)

21 BY MR. FAULCONER:

22 Q All right, we can take that down. Now, earlier we  
23 looked at a schedule that said that they left Smith  
24 Mountain Lake at 7 p.m., or at least were scheduled to.

25 A Correct.

**MARTIN KENT - DIRECT**

2561

1 Q I'd like to show you what's already been entered as  
2 Exhibit 189. Zooming in on the bottom e-mail, or on both  
3 e-mails here, do you see the bottom e-mail dated July  
4 31st, 2011 at 11:29 p.m.?

5 A I do.

6 Q Mr. Kent, were you copied on either of these e-mails  
7 that were sent between Dr. Hazel and Mr. McDonnell?

8 A I was not.

9 Q At the time of this e-mail, did you know about this  
10 meeting that Mr. McDonnell was contacting Dr. Hazel about?

11 A I did not.

12 Q We can take that down. I'd like to move forward two  
13 weeks to August 16th of 2011. I'd like to show you what's  
14 been marked for identification as Exhibit 635.

15 MR. ASBILL: I object to this unless it is  
16 redacted. Same problem we had before.

17 MR. FAULCONER: Could I lay a couple of  
18 foundation questions and then we can approach to discuss  
19 it?

20 THE COURT: We will deal with the redaction  
21 before it is published to anybody. Go ahead.

22 BY MR. FAULCONER:

23 Q Mr. Kent, is this a document with your handwriting on  
24 it?

25 A It does appear to be my handwriting, yes.

**MARTIN KENT - DIRECT**

2562

1 Q Is it a printout of an e-mail dated August 16th,  
2 2011?

3 A It does appear to be, yes.

4 Q After you wrote what you wrote in your handwriting on  
5 this e-mail, can you tell the members of the jury what you  
6 believe you did with this document?

7 A Typically, what I would do when there was handwriting  
8 on a document for the Governor's attention, as I mentioned  
9 previously, my office was adjoining his in what we  
10 referred to as the pod. I would usually take whatever it  
11 was that I had written on and place it on his desk in his  
12 office.

13 Q Do you believe that you either did that or handed it  
14 to him personally with this document?

15 A I can't remember with absolute certainty that I did  
16 that, but that was certainly normally what I would do,  
17 yes.

18 MR. FAULCONER: May we approach briefly?

19 THE COURT: Come on up.

20 (At Bench.)

21 MR. FAULCONER: Your Honor, now that we have  
22 laid the foundation, he believes he gave this document to  
23 the Governor. We would ask that it be entered into  
24 evidence unredacted.

25 THE COURT: All right.

**MARTIN KENT - DIRECT**

2563

1                   MR. ASBILL: This is the same document we dealt  
2 with before that references the Attorney General's opinion  
3 and summarizes it at the bottom of the e-mail and attaches  
4 the opinion to it.

5                   MR. FAULCONER: Your Honor, as we understand it,  
6 previously we said although it was obvious from the  
7 document that it was intended to be given to the Governor,  
8 we didn't previously lay a foundation that it was written  
9 on by Mr. Kent, and his normal course would be to hand it  
10 to the Governor or place it on his desk. We offer it for  
11 the fact that it was given to Mr. McDonnell but not for  
12 the substance.

13                  THE COURT: You have established that this is  
14 what he would normally have done. We haven't established  
15 that he did. Which I think is --

16                  MR. FAULCONER: Doesn't that go to weight, Your  
17 Honor?

18                  THE COURT: I agree with Mr. Asbill on this.  
19 Unless we've got some direct testimony that he has this,  
20 I'm not going to enter this into evidence.

21                  MR. DRY: One more fact. That document was  
22 produced by the defendant in the Statement of Economic  
23 Interests, the draft. So he got it. He produced it to  
24 us.

25                  MR. FAULCONER: It was mixed in with the other

**MARTIN KENT - DIRECT**

2564

1        pages of the SOEI.

2                    MR. ASBILL: We produced what we had. That  
3 doesn't mean he saw it or read it. We produced what was  
4 in the Governor's files at their request.

5                    MR. FAULCONER: If the question is whether or  
6 not he received it, if he produced it, then we know for  
7 certainty he received it. How closely he read it is a  
8 matter of weight.

9                    THE COURT: The objection is overruled.

10                  (In Open Court.)

11                  MR. FAULCONER: Could we publish this document  
12 to the jury?

13                  THE COURT: Go ahead.

14                  MR. FAULCONER: I assume this is admitted into  
15 evidence now?

16                  THE COURT: It will be admitted.

17 BY MR. FAULCONER:

18 Q        Mr. Kent, could you read what you write in your  
19 handwriting on this document?

20 A        Dated 8-16-11. "Governor: FYI. As you can see, I  
21 have asked for written guidance on this and other issues.  
22 Thanks." Those are my initials.

23 Q        Is that MLK?

24 A        MLK, yes.

25 Q        Then "P.S.," what do you write there?

**MARTIN KENT - DIRECT**

2565

1 A "P.S., issued by Mary Sue Terry as Attorney General,  
2 AG."

3 Q If we could zoom out on this document. The e-mail  
4 you actually print out here, what's the subject line of  
5 the e-mail?

6 A It says: "COIA, Personal Friend."

7 Q Do you recall having had some conversation with  
8 Mr. McDonnell leading up to this time frame about the  
9 definition of a personal friend?

10 A Vaguely. I must have had some conversation, which is  
11 why I would have assumed that I would have given this to  
12 the Governor, yes.

13 Q If we could scroll down, was there actually a part of  
14 this document that you underlined before you took it in to  
15 the Governor's Office?

16 A It appears it is underlined. That could very well  
17 have been my underlining.

18 Q Read what's underlined on that document.

19 A It says: "When the circumstances suggest a  
20 relationship between the gift and the declarant's public  
21 position, even when the relationship is relatively  
22 distant, it is my opinion that the gift is required to be  
23 disclosed in Schedule E."

24 Q It says "Schedule E" there. Is this referring to the  
25 Statement of Economic Interests?

**MARTIN KENT - DIRECT**

2566

1 A I believe it is, yes.

2 Q We can take that down. I'd like to show you what's  
3 been marked for identification as Exhibit 206. Mr. Kent,  
4 is this an e-mail chain that is essentially a later set of  
5 e-mails in this same thread of e-mail conversation?

6 A It appears to be, yes.

7 Q And is it between you and Jasen Eige?

8 A It is.

9 MR. FAULCONER: We would offer Exhibit 206 into  
10 evidence.

11 THE COURT: It will be admitted.

12 BY MR. FAULCONER:

13 Q Now, first, looking, if we could zoom out a little  
14 bit, and looking at Page 1 down at the bottom, do you see  
15 there the e-mail, Tuesday, August 16th, 2011 at 10:18  
16 a.m.?

17 A I do.

18 Q Could you read to us what you write to Jasen Eige?

19 A It says: "I talked to the Governor about it  
20 yesterday. Prompted this follow-up."

21 Q Then turning to the next page, do you see in the  
22 e-mail that preceded that that Mr. Eige wrote to you,  
23 "This is the standard we have been using, no bright line,  
24 but you and I need to discuss the matter we talked to JK  
25 about." Did I read that right?

**MARTIN KENT - DIRECT**

2567

1 A You did.

2 Q Based on your review of this e-mail, who do you  
3 believe that JK is referring to here?

4 A I believe that was Jerry Kilgore.

5 Q Now, Jerry Kilgore, did both you and Mr. Eige know  
6 Mr. Kilgore?

7 A We did. We both worked for him when he was Attorney  
8 General.

9 Q Did you interact with him being a lobbyist on a  
10 number of different issues?

11 A We did. I probably did less than Jasen, because that  
12 was Jasen Eige's primary role, but sure, we did.

13 Q During this time frame, that being August of 2011,  
14 did you know at some point that month that Mr. Kilgore  
15 represented Jonnie Williams and Star Scientific?

16 A I did.

17 Q Did you also interact, to be clear, with Mr. Kilgore  
18 on some other issues on something related to something  
19 involving a bank?

20 A I did, and it was all in that same time frame.

21 Q Was that Bank of Mellon?

22 A That's correct.

23 Q Sitting here today, can you specifically recall the  
24 conversation that Mr. Eige is referring to here?

25 A I can't. I have struggled to try to recall exactly

**MARTIN KENT - DIRECT**

2568

1 what that is, and the best I can think of, because there  
2 were two separate issues that involved Jerry Kilgore, that  
3 we were potentially conflating two issues in the same  
4 e-mail. That's the best I can come up with.

5 Q Just to be clear, when you would interact with  
6 Mr. Kilgore or any other lobbyist, was it common to have  
7 conversations that would start on one topic and go on to  
8 another?

9 A Particularly with lobbyists, they try to get as many  
10 issues as they could so they could bill as many clients as  
11 possible.

12 Q Take that down. Regardless of the specifics of that  
13 e-mail chain, when you wrote those e-mails on August 16th,  
14 2011, were you aware that Mr. McDonnell and one of his  
15 sons had been out to Kinloch Golf Club again on August  
16 13th and spent more than \$800 on Mr. Williams' account?

17 A I was not.

18 Q I'd like to move forward in time a little bit and go  
19 to late August of 2011. I'd like to show you what's been  
20 entered into evidence as Exhibit 230.

21 MR. FAULCONER: For identification as Exhibit  
22 230, Your Honor.

23 THE COURT: All right.

24 BY MR. FAULCONER:

25 Q Mr. Kent, do you recognize this as a regular daily

**MARTIN KENT - DIRECT**

2569

1 schedule for Mr. McDonnell?

2 A It appears to be, yes.

3 Q Is it dated August 30th, 2011?

4 A It is.

5 MR. FAULCONER: We would offer Exhibit 230 into  
6 evidence.

7 THE COURT: It will be admitted.

8 BY MR. FAULCONER:

9 Q Before we sort of walk through this document in a  
10 little bit of detail, can you tell us whether late August  
11 of 2011 was a busy time for you and the Governor's Office?

12 A I believe it was probably one of the busiest times of  
13 the four years we were in office. As those I'm sure in  
14 the room can recall, within a one-week span, we had an  
15 earthquake, a sizeable earthquake in Louisa County; we had  
16 a major hurricane, one of the most devastating hurricanes  
17 that Virginia has had come up its east coast; and there  
18 were fires in the Great Dismal Swamp and the Chesapeake  
19 area which were affecting traffic up and down the  
20 interstate in Virginia as far west as the Richmond area.

21 Q So in that time frame, could you tell us what the  
22 first thing is on Mr. McDonnell's schedule at 8:20 a.m.  
23 that day?

24 A Says depart for the helipad.

25 Q Then that interview there, can you tell us what that

**MARTIN KENT - DIRECT**

2570

1 interview generally would have been?

2 A There are two radio stations in Virginia, AM radio  
3 stations, which have what we call a monthly Ask The  
4 Governor. It is WRVA in Richmond, and WTOP, which is in  
5 Northern Virginia. And typically, once a month, the  
6 Governor will do both radio shows. But this appears to be  
7 an interview with Jimmy Barrett, the host of WRVA,  
8 specifically about the hurricane, Hurricane Irene.

9 Q Now, going down past the travel to the next item that  
10 looks like reference is WTOP, that radio station you just  
11 referenced, in that 9:30 to ten time frame, if we could  
12 scroll down just a little bit. Then actually at 10 to 11  
13 where it actually has the show itself, could you tell us  
14 what it says there under "Note"?

15 A It says, "Note: Governor O'Malley is scheduled to  
16 call into the show regarding Hurricane Irene."

17 Q Do you recall which state Governor O'Malley is from?

18 A The Governor of Maryland.

19 Q At the top of the second page of this document, can  
20 you tell us what travel is listed there at the top?

21 A At the very top, "11:30 a.m. to 12:30 p.m., Helo from  
22 Northern Virginia to Richmond."

23 Q Then what is listed from 12:35 to 1:30 p.m.?

24 A From 12:35 to 1:30 p.m., it says, "Lunch with  
25 Virginia researchers-Executive Mansion."

**MARTIN KENT - DIRECT**

2571

1 Q Do you see there the two little icons? It looks like  
2 a Word document and an Excel document?

3 A I do.

4 Q Can you tell us what significance those have in terms  
5 of what those documents would typically be?

6 A Typically, the scheduler will attach supporting  
7 documentation to the Governor's calendar. It could be a  
8 list of attendees, it could be the request, the original  
9 request for the event, and it could also be talking points  
10 the Governor may or may not use at that event.

11 Q When they were attached to the schedule, would they  
12 ultimately be printed out and given to Mr. McDonnell?

13 A They would, yes.

14 Q Do you recall seeing him carry those documents around  
15 at times?

16 A He had what we referred to as The Notebook, and it  
17 was a black binder which contained his daily schedule.

18 Q To be clear, Mr. Kent, you said this was a busy time,  
19 and we have seen entries about the hurricane. Did  
20 Mr. McDonnell have the authority to remove things from his  
21 schedule?

22 A He did.

23 Q To your knowledge, did he remove this event from  
24 12:35 to 1:30 p.m. from his schedule that day?

25 A To my knowledge, he did not.

**MARTIN KENT - DIRECT**

2572

1 Q I'd like to show you what's been marked for  
2 identification as Exhibit 231. Do you recognize this as  
3 what looks like an Outlook calendar entry for that lunch  
4 with Virginia researchers?

5 A It appears to be.

6 Q Do those icons in this document appear to match the  
7 icons we were just looking at?

8 A I believe so.

9 MR. FAULCONER: We would offer Exhibit 231 into  
10 evidence.

11 THE COURT: It will be admitted.

12 BY MR. FAULCONER:

13 Q All right, now, if we could zoom out and go to the  
14 second page. Does that appear to be that Event Briefing  
15 Form that you were talking about?

16 A It appears to be a briefing form, and it looks to be  
17 lunch with researchers and doctors, yes.

18 Q Now, the handwriting towards the bottom of that page,  
19 if we could just zoom in on that sort of box right there.  
20 Could you tell us whether you recognize that handwriting?

21 A That appears to be the Governor's handwriting.

22 Q Could you tell us below the handwriting what name has  
23 an asterisk next to it?

24 A John Clore.

25 Q At that time, did you know who John Clore was?

**MARTIN KENT - DIRECT**

2573

1 A I did not.

2 Q If we could turn to the second page. Do you  
3 recognize the handwriting that's on this page?

4 A I do.

5 Q And whose is it?

6 A It appears to be the Governor's.

7 Q Could you walk us through what names have an asterisk  
8 or handwriting by them on this page?

9 A Jasen Eige, Office of the Governor has an asterisk.  
10 John Lazo has an asterisk next to it. Then there is  
11 handwriting next to a name, Diane Roskamp. Then  
12 handwriting next to a name that says Bob Roskamp. And  
13 then there is handwriting next to the name Mary-Shea  
14 Sutherland.

15 Q We can go ahead and take that down. Taking a step  
16 back from the schedule and briefing form, did you actually  
17 attend this event at the Mansion?

18 A I did not.

19 Q Do you recall some conversation and e-mail traffic  
20 about a press release before the event occurred?

21 A The night before, yes.

22 Q I'd like to show you what's been marked for  
23 identification as Exhibit 223. Is this an e-mail from  
24 Tucker Martin to you and other Governor's Office staff  
25 members attaching a draft press release?

**MARTIN KENT - DIRECT**

2574

1 A It appears to be, yes.

2 Q Is it dated August 29th, 2011?

3 A It is.

4 MR. FAULCONER: We would offer Exhibit 223 into  
5 evidence.

6 THE COURT: It will be admitted.

7 BY MR. FAULCONER:

8 Q All right. Now, in that e-mail at the top, that's  
9 from Tucker Martin, right?

10 A It is.

11 Q Now, if we could turn to the third page of this  
12 document. Does that look like the draft press release  
13 that you received?

14 A I believe it is, yes.

15 Q Could you read what it says in the first sentence of  
16 the fourth paragraph?

17 A "The Governor of the Commonwealth of Virginia, Robert  
18 McDonnell, and First Lady Maureen McDonnell, are joining  
19 with a group of physicians and healthcare providers in the  
20 Richmond area today to learn more about the state of the  
21 research."

22 Q Then could you read the sentence there sort of a  
23 little ways down that starts with "Jonnie R. Williams"?

24 A "Jonnie R. Williams, Star Scientific CEO, expressed  
25 his appreciation for Governor and First Lady McDonnell's

**MARTIN KENT - DIRECT**

2575

1 interest in the company's work. 'All of us at Star and  
2 Rock Creek are very grateful to the Governor and  
3 Ms. McDonnell for their interest in our research and  
4 product development.' "

5 Q Mr. McDonnell -- Mr. Kent, what was your reaction to  
6 this press release when you saw it?

7 A Well, if I could step back just a second and sort of  
8 put it in context. I had mentioned that there were  
9 literally three natural disasters that were ongoing the  
10 week prior and the weekend before this. To make matters  
11 more complicated, I actually was on my family vacation the  
12 preceding week, actually had to leave my family vacation a  
13 day early, partly due to the hurricane and partly because  
14 of what had happened here in Richmond, to come back. So  
15 the weekend leading up to this, to say it was busy is an  
16 understatement. We were, I believe, at the Emergency  
17 Operations Center, the Governor was as well, senior  
18 members of the Administration, the Secretary of Public  
19 Safety. We had lost several lives in the hurricane that  
20 took place. There was a lot of wind, a lot of wind  
21 damage, a lot of trees had fallen, and several people died  
22 as a result of trees actually falling either on their  
23 house or their car. So there was a lot going on.

24 I had just come back from my vacation. We were  
25 dealing with the natural disasters that had occurred, and

**MARTIN KENT - DIRECT**

2576

1 then that evening, the first full workday back from my  
2 vacation, is when we received this e-mail. And when I  
3 received the e-mail from Tucker -- actually, it was sent,  
4 if I am not mistaken, it was sent by Mary-Shea to Tucker,  
5 and then Tucker replied to all and included Jasen Eige and  
6 myself on the response. And when we saw the e-mail, I  
7 read the attachment, I believe I responded to Mary-Shea,  
8 "What is this, when is this, is the Governor aware of his  
9 inclusion in this," something to that effect. I don't  
10 recall specific conversation with her, although I'm sure I  
11 probably had some conversation to try to get more  
12 information about it. And I believe I immediately went to  
13 go see Jasen Eige about it at well.

14 Q Why did you immediately go to see Mr. Eige?

15 A Because I was concerned at first, the way this looked  
16 to me to be a press release, the way it was worded. And,  
17 you know, I think it struck me as the press release and  
18 what it appeared to be, I'm assuming I got this from  
19 Mary-Shea because I didn't really talk to anybody else  
20 about it, would appear to be an effort to actually hold a  
21 press conference at the Mansion with regard to this. And  
22 that struck me as unusual.

23 Q You were talking a little bit about your reaction.  
24 If we could go to the first page, could you tell us sort  
25 of at the bottom of that page, Mary-Shea Sutherland, could

**MARTIN KENT - DIRECT**

2577

1 you tell us what she wrote in that e-mail lower in the  
2 thread?

3 A It says: "I just sent David a message - NO WAY this  
4 can go as written. You can call me," and it gives a  
5 number.

6 Q If we scroll up a little bit. Can you tell us one  
7 more e-mail past, can you tell us, you might have already  
8 said this, but who forwarded it to Tucker Martin?

9 A It appears that she did, yes.

10 Q All right. I'd like to show you what's already been  
11 entered as Exhibit 224. Zoom in on that top e-mail. Is  
12 that the response back to Mary-Shea that you referenced  
13 just a moment ago?

14 A It is.

15 Q I'd like to show you what's been marked for  
16 identification as Exhibit 226. Zooming in on that top  
17 e-mail, is this Mary-Shea Sutherland's response to you?

18 A It appears to be, yes.

19 Q Is that also dated August 29th, 2011?

20 A It is.

21 MR. FAULCONER: We would offer Exhibit 226 into  
22 evidence.

23 THE COURT: It will be admitted.

24 BY MR. FAULCONER:

25 Q Mr. Kent, could you just read for us that one-line

**MARTIN KENT - DIRECT**

2578

1 response from Mary-Shea Sutherland?

2 A It says, "I didn't know about release until an hour  
3 ago. Call me when you can."

4 Q We can take that down. Now, after you went and spoke  
5 to Mr. Eige, can you sort of walk us through what happened  
6 in the process after that?

7 A We talked about it, he agreed that it was unusual,  
8 and we were concerned about the way it was worded. And I  
9 believe he was the one that was aware of the fact that  
10 Jerry Kilgore represented, I believe represented  
11 Mr. Williams. And we got on the phone immediately -- my  
12 recollection is we got on the phone immediately and spoke  
13 with Jerry Kilgore about it.

14 Q How did that conversation go?

15 A It went well. My recollection is we explained to  
16 Jerry what we had received and that we had some concerns,  
17 and my recollection is, he understood and agreed with  
18 those concerns and told us that he would address it with  
19 his client.

20 Q Now, after talking to Mr. Kilgore, do you recall  
21 whether either you or Mr. Eige decided to attend the  
22 event?

23 A Yes. As I mentioned, I had just returned from my  
24 vacation, we were still in the midst of dealing with the  
25 natural disasters that had taken place or were taking

**MARTIN KENT - DIRECT**

2579

1 place. And that was one of my many roles, was to  
2 basically coordinate that with the Secretary of Public  
3 Safety's office in the event of a natural disaster to make  
4 sure the Governor was issuing executive orders, emergency  
5 declarations, things of that nature that a Governor would  
6 typically do. And Jasen and I discussed it and we agreed  
7 someone should go to make sure what we had discussed with  
8 Jerry was actually done. And Jasen, his role didn't  
9 require that involvement in the natural disaster process,  
10 so he agreed to go.

11 Q To be clear, Mr. Kent, at that point, on August 29th,  
12 2011, were you aware of the things of value that had been  
13 provided by Mr. Williams to the McDonnells?

14 A I was not.

15 Q Now, after the event, did you become aware of how the  
16 event was paid for?

17 A At some point, I don't remember exactly when, I have  
18 tried to go back and piece that together. I'm not sure  
19 there is any documentation to help with that. But at some  
20 point I learned that the Governor's PAC had paid for that  
21 event.

22 Q Just to be clear, do you remember any of that  
23 conversation happening before the event or was it after?

24 A No, I don't recall it. It couldn't have happened  
25 before because I don't believe I knew about the event

**MARTIN KENT - DIRECT**

2580

1 until the night before, so I think it had to have happened  
2 after the event.

3 Q To be clear, do you recall having any conversations  
4 with Mr. McDonnell about the PAC paying for the event?

5 A I do not recall that, no.

6 Q All right. I'd like to move forward to September of  
7 2011, a few weeks later. I'd like to show you what's been  
8 marked or what's already been entered as Exhibit 245. Is  
9 this an e-mail exchange with you, Katherine Harris, and  
10 Jasen Eige?

11 A Yes, it is.

12 Q If we could scroll down to see the first e-mail in  
13 the exchange. Katherine Harris is the scheduler; is that  
14 correct?

15 A That's correct.

16 Q Scrolling back up again, do you recall getting this  
17 e-mail forwarded from Katherine Harris to you and Mr. Eige  
18 asking about a dinner related to Anatabloc in October of  
19 2011?

20 A I do.

21 Q Can you tell us what happened once you got this  
22 e-mail?

23 A She forwarded it to myself and Jasen, it looks like,  
24 about 11 a.m. on the 21st, and it looks like I responded  
25 back to her at 2:22 p.m. on the same day and basically

**MARTIN KENT - DIRECT**

2581

1 said, "Yes, we should discuss." I do recall this. And  
2 one of the parameters we talked a few moments ago about  
3 the Governor attending events generally, one of the  
4 factors that we look at is, has the Governor recently done  
5 something with this person or something for this industry.  
6 And I believe, I saw this, recalled the event that had  
7 occurred three weeks prior, and I believe I told  
8 Ms. Harris that we did not need to schedule the Governor  
9 for this.

10 Q All right. I'd like to move to 2012. Now, earlier  
11 we saw a little bit of e-mail traffic about the SOEI or  
12 Statement of Economic Interests. Are you aware of when  
13 each year that document would typically be filed?

14 A I believe it has to be filed by the 15th of January  
15 for the preceding year.

16 Q And in January of 2012, were you aware that  
17 Mr. McDonnell and his sons played golf at Kinloch on  
18 Mr. Williams' tab on January 7th, 2012?

19 A I was not.

20 Q I'd like to move forward to February of 2012 and show  
21 you what's been entered into evidence as Exhibit 319.  
22 Now, is this an e-mail forward from Mr. Eige to you on  
23 February 17th, 2012 at 12:06 a.m.?

24 A It appears to be, yes.

25 Q It looks like Mr. Eige says "FYI" there.

**MARTIN KENT - DIRECT**

2582

1 A Yes.

2 Q Do you recall ever discussing this e-mail with  
3 Mr. McDonnell?

4 A No. And I actually, when this was brought to my  
5 attention last year, I actually went first to Mr. Eige, to  
6 Jasen, and asked him if we had ever discussed this,  
7 because I did not recall this e-mail. And he informed me  
8 that he did not recall we had ever discussed it. So, you  
9 know, I'm not sure, given the time of day, although it was  
10 not unusual to get e-mails all throughout the night, it  
11 could have been that I just simply didn't see it, didn't  
12 focus on it at the time.

13 Q So sitting here today, do you have any specific  
14 recollection of any conversation with either Mr. McDonnell  
15 or Mr. Eige about this e-mail?

16 A I do not, no.

17 Q I'd like to ask you one quick question about this,  
18 which is, do you see there where it says,  
19 "rfmva09@gmail.com"?

20 A Yes, I do.

21 Q Was that a common e-mail address for Mr. McDonnell to  
22 use while he was Governor?

23 A It was, yes.

24 Q Even though it is a gmail address, would he typically  
25 use that for things that involved official government

**MARTIN KENT - DIRECT**

2583

1 business?

2 A Yes. He had at one point in time, I think we started  
3 out with a BlackBerry, and then ultimately migrated to an  
4 iPhone. And the Governor, I think probably the only  
5 person that received more e-mails than I did was probably  
6 the Governor. And it got to a point, I believe the  
7 Governor's aide actually did this, and we didn't discuss  
8 it until afterwards, but the Governor would get so many  
9 e-mails, he would receive them on the same device. He  
10 would receive e-mails to his official account and e-mails  
11 to a personal account, and oftentimes he would just look  
12 at the e-mail and respond. And the way the BlackBerry was  
13 set up, you have to actually go out and go into the  
14 particular e-mail system to make sure you are responding  
15 on that e-mail server, if that makes sense. And the  
16 Governor would oftentimes respond to personal e-mails on  
17 his state system, and respond to state e-mails on his  
18 personal system. So a decision somewhere along the way  
19 was made to simplify it to give him one e-mail address  
20 that he used as his primary e-mail address.

21 Q You mentioned a couple different types of e-mail  
22 addresses. Do you recall him during the campaign using an  
23 e-mail address rfmcandidate@bobmcdonnell.com?

24 A That sounds familiar. It was on the campaign. I'm  
25 not sure if I used it a lot, I didn't use it a lot. But

**MARTIN KENT - DIRECT**

2584

1       that's possible, yes.

2       Q      Once he became Governor, do you recall him using the  
3           e-mail address governor@bobmcdonnell.com?

4       A      Yes, he did.

5       Q      That bobmcdonnell.com sort of suffix on the end of  
6           the e-mail, what did that refer to?

7       A      That was part of his campaign.

8       Q      Was that related to the PAC?

9       A      Initially it was the campaign and then ultimately I  
10          think it became part of the PAC, yes.

11      Q      Did he also have an official governor.virginia.gov  
12          e-mail address?

13      A      He did, yes.

14      Q      I'd like to show you what's been entered as Exhibit  
15          318. This is an e-mail, the lower one down there, that  
16          was six minutes before the e-mail we just looked at. To  
17          be clear, were you aware of this e-mail from Mr. McDonnell  
18          to Mr. Williams on February 16th, 2012?

19      A      No.

20      Q      All right. I'd like to move forward a little bit  
21          further into February and show you what's been marked or  
22          what's been entered as Exhibit 345. Does this appear to  
23          be an Outlook calendar event?

24      A      It does.

25      Q      Now, can you tell us, where it says "PHB Governor's

**MARTIN KENT - DIRECT**

2585

1 conference room," what that refers to there?

2 A As I mentioned previously, what I referred to as the  
3 pod, in addition to my office, the Governor's Office, and  
4 our executive assistants' offices, the Governor has a  
5 conference room, which is connected to his office through  
6 a door. And that is what we referred to as the Governor's  
7 conference room.

8 Q This particular meeting on February 29th, 2012, what  
9 does it list as the topic for that meeting?

10 A "Healthcare Group Leaders Reception Tonight at the  
11 Executive Mansion."

12 Q To be clear, are you listed as a participant on this  
13 meeting?

14 A No.

15 Q Did you attend this meeting?

16 A No.

17 Q Is Mary-Shea Sutherland listed as a participant on  
18 this meeting?

19 A No.

20 Q To your knowledge, was Mary-Shea Sutherland even  
21 working at the Mansion in February of 2012?

22 A No, she was not.

23 Q Is Ms. McDonnell listed as a participant?

24 A No.

25 Q Now, are you aware of what Mr. McDonnell and

**MARTIN KENT - DIRECT**

2586

1 Mr. Williams actually discussed in this meeting?

2 A No.

3 Q I'd like to show you what's been entered into  
4 evidence as Exhibit 2. Now, this document, do you  
5 recognize the handwriting that's shown on this first page  
6 of this document?

7 A It appears to be the Governor's handwriting, yes.

8 Q Now, could you read for us what it says where it says  
9 "File Form 4" there down the second bullet point, it looks  
10 like?

11 MR. ASBILL: I object. He has no knowledge of  
12 this meeting.

13 THE COURT: Overruled.

14 THE WITNESS: It says: "File Form 4 with the  
15 SEC saying sold = doesn't disclose who sold to for  
16 Jonnie."

17 BY MR. FAULCONER:

18 Q Mr. Kent, at the time, any time in 2012, were you  
19 aware of Mr. McDonnell and Mr. Williams discussing  
20 anything about this?

21 A No.

22 Q I'd like to go to Page 3 of this document. Actually,  
23 Page 2 real quick. Do you recognize that handwriting?

24 A That appears to be the Governor's as well.

25 Q Turning to Page 3. Apart from the section that's

**MARTIN KENT - DIRECT**

2587

1 between the lines, do you recognize the handwriting at the  
2 top of that document and below the line at the bottom?

3 A Very top appears to be the Governor's handwriting as  
4 well.

5 Q Then down below?

6 A I believe it is, yes. That appears to be his  
7 handwriting.

8 Q If we could zoom back out and zoom in on that bottom  
9 section, do you see where it says, "Loan of 50k shares to  
10 Maureen"?

11 A I do.

12 Q Were you aware of anything about loaning shares to  
13 Maureen McDonnell in this time frame?

14 A No.

15 Q All right. I'd like to go to Page 4 of this  
16 document. Does this document appear to be, or do you  
17 recognize the handwriting on this page?

18 A It appears to be the Governor's handwriting.

19 Q And have you had a chance to review this page of  
20 handwriting before coming into Court?

21 A I have.

22 Q And any of this information that's referenced on this  
23 document, were you aware of any of it in 2012?

24 A No.

25 Q I'd like to go to Page 5. Do you recognize the

**MARTIN KENT - DIRECT**

2588

1 handwriting on this page?

2 A It appears to be the Governor's as well.

3 Q Now, do you see where it says, could you read what it  
4 says there starting with "Pay back" and down to "Maureen"?

5 A "Pay back in cash at 50,000 times 1.90 =  
6 \$90,000 either return or 50-70 K shares." It looks like  
7 "Plan" to the left, "split into 10k shares certificates  
8 for delivery to Maureen" or "son deliver to Maureen."  
9 Sorry.

10 Q Do you ever recall meeting Mr. Williams' son, Jonnie  
11 Williams, Jr.?

12 A No.

13 Q At this time or any time in 2012, were you aware of  
14 anything involving share certificates being delivered to  
15 Maureen McDonnell by Jonnie Williams, Jr.

16 A No.

17 Q Turn to Page 6 of this document. Do you recognize  
18 the handwriting on this page?

19 A It appears to be the Governor's handwriting.

20 Q What's the date written there at the top?

21 A 3-12-12.

22 Q If we could turn to the seventh page. Do you  
23 recognize what this seventh page of this document appears  
24 to be?

25 A This appears to be another copy of the Governor's

**MARTIN KENT - DIRECT**

2589

1 daily schedule.

2 Q Is that for March 12th of 2012?

3 A It appears to be, yes.

4 Q Now, I think we have sort of asked about it a little  
5 bit, but before the investigation went public, were you  
6 aware of either a \$50,000 loan or a \$20,000 loan from  
7 Mr. Williams to the McDonnells in March or May of 2012?

8 A I was not.

9 Q All right. I'd like to move forward and focus on  
10 February of 2013. Do you recall learning that month that  
11 Ms. McDonnell was interviewed by law enforcement?

12 A I do.

13 Q And after that interview took place, do you recall  
14 speaking to Mr. McDonnell about it?

15 A I do. Yes.

16 Q And do you recall how close in time that was to the  
17 interview?

18 A My recollection is, it was either that day or the  
19 next day. It was within 24 hours.

20 Q Could you tell the members of the jury what  
21 Mr. McDonnell's reaction was to that interview when he  
22 discussed it with you?

23 A I can. I should explain sort of how I was involved  
24 in this. I was contacted because I was the closest to the  
25 Governor as far as staff is concerned, to --

**MARTIN KENT - DIRECT**

2590

1 Q Sorry to interrupt, Mr. Kent, but just to make sure  
2 we don't get into any problems with who said what to whom,  
3 could you just focus in on what Mr. McDonnell's reaction  
4 was and what he said after the interview?

5 A Yes. He was upset. He was upset, and basically said  
6 that the interview was not what it was purported to be  
7 for.

8 Q Did he describe at all what he meant in terms of what  
9 the difference was?

10 A No. We didn't get into a lot of back and forth. It  
11 was a pretty short conversation. But he was visibly  
12 upset.

13 Q Do you recall whether he said whether it was broader  
14 or narrower than he thought it was going to be?

15 A Broader, was the indication I got.

16 Q Just to be clear, at that time, when you were talking  
17 about the interview that Ms. McDonnell had with law  
18 enforcement, did Mr. McDonnell tell you anything about a  
19 \$50,000 loan from Mr. Williams in May of 2011?

20 A No.

21 Q Did he tell you anything about a \$15,000 payment for  
22 a wedding?

23 A No.

24 Q Anything about a \$50,000 second loan?

25 A No.

**MARTIN KENT - DIRECT**

2591

1 Q Anything about a \$20,000 third loan?

2 A No.

3 Q Anything about any of the golf at Kinloch?

4 A No.

5 Q Now, before, at some point before the press stories  
6 broke, do you recall Mary-Shea Sutherland saying something  
7 about credit card debt to you as it related to  
8 Mr. Williams?

9 A She did. It was, it had to be sometime before she  
10 had left, during a general conversation that we had. And  
11 there was some reference to credit card debt.

12 Q Could you explain exactly what that was as it related  
13 to Mr. Williams?

14 A It was unclear at the time. At that time, there  
15 were, I'm assuming that's when it was, Mary-Shea had been  
16 to my office several times just upset in general about her  
17 situation. And she did reference that. There was some  
18 vague reference to credit card debt, and I believe she  
19 mentioned Maureen at the time when she said it.

20 Q Did she mention something about Mr. Williams in that  
21 context?

22 A Yeah, I think she did. It was, again, sort of not  
23 something we spent a lot of time harping on. It kind of  
24 was out of sight, out of mind for several years.

25 Q And did she tell you anything in that conversation

**MARTIN KENT - CROSS - ASBILL**

2592

1 about what amount of credit cart debt she was talking  
2 about?

3 A I recall her mentioning, I believe, \$20,000. That  
4 sounds right.

5 Q Now, after the press stories broke about the  
6 investigation or any of the press stories about the  
7 relationship between Mr. Williams and Mr. McDonnell, did  
8 you ask Mr. McDonnell about whether a loan from  
9 Mr. Williams had anything to do with credit card debt?

10 A I did. It was sometime, probably early spring of  
11 last year, and he corrected me quickly and said that, "No,  
12 that was a loan." And that was really the extent of the  
13 conversation we had.

14 Q Did he tell you whether the loan had anything to do  
15 with credit card debt?

16 A Well, I think I brought up the question of credit  
17 card debt, and he responded that, "No, that was a loan."  
18 My recollection is, that was pretty much the extent of the  
19 conversation.

20 Q Did you also have a conversation or during the  
21 conversations that you had with Mr. McDonnell after the  
22 press stories broke, did you ever talk to him about the  
23 second \$50,000 loan from Mr. Williams in May -- March of  
24 2012?

25 A No. At some point he mentioned to me, it was during

**MARTIN KENT - CROSS - ASBILL**

2593

1 the process of obviously he had, I believe, retained  
2 counsel, and we were being inundated with requests on a  
3 daily, sometimes hourly basis, by the media. And at some  
4 point I went into his office and asked, I believe, about,  
5 generally about the loan or the loans. And his response  
6 to me was that it was a matter that he was discussing with  
7 his counsel and we shouldn't get into it any further.

8 MR. FAULCONER: One moment, Your Honor.

9 (Counsel conferring with co-counsel.)

10 MR. FAULCONER: No further questions at this  
11 time, Your Honor.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. ASBILL:

15 Q Good morning, Mr. Kent. How are you?

16 A Just fine.

17 Q I want to go back a little bit to the beginning of  
18 your examination, of your direct examination. And you  
19 told us you went to the University of Richmond and then to  
20 Mercer Law School; is that right?

21 A Yes, sir, that's correct.

22 Q You were at one point obviously the Chief of Staff to  
23 my client, correct?

24 A That is correct, yes, sir.

25 Q Prior to that you were at the Attorney General's

**MARTIN KENT - CROSS - ASBILL**

2594

1 Office?

2 A Yes, sir.

3 Q And was one of your assignments at the Attorney  
4 General's Office heading the Criminal Division?

5 A At one point I was in charge of what was referred to  
6 as the Special Prosecutions Section, which was a subset of  
7 the Criminal Division. I was never the Deputy of the  
8 Criminal Division, but I was the Chief of the Special  
9 Prosecutions Section.

10 Q Okay. That was one of your many jobs at the Attorney  
11 General's Office before you came over to the Governor's  
12 Office; is that correct?

13 A Yes, sir, it is.

14 Q Okay. I believe you testified early on this morning  
15 that if my client said to you to do something, that you  
16 would absolutely do it. Is that correct?

17 A Yes, sir.

18 Q And obviously, that would not include doing something  
19 that you thought was wrong or improper or unethical or  
20 immoral, right?

21 A Absolutely not.

22 Q So if he asked you to do something that you thought  
23 was a legitimate request, you would obviously do it.

24 A That's what I was referring to, yes, sir.

25 Q To your recollection, in all the time that you spent

**MARTIN KENT - CROSS - ASBILL**

2595

1 with my client, in the Governor's Office, Attorney  
2 General's Office, did he ever ask you to do something that  
3 you didn't do because you thought it was wrong to do it?

4 A No, sir.

5 Q Now, I think you talked a little bit about Dr. Hazel  
6 and Molly Huffstetler. Both of those people are part of  
7 the Governor's staff; is that right?

8 A They are part of the Secretariat which ultimately  
9 would be part of the Governor's staff, yes, sir, that's  
10 correct.

11 Q Ultimately, for example, Ms. Huffstetler reports to  
12 Dr. Hazel but Dr. Hazel reports to the Governor?

13 A Yes, sir.

14 Q Anyone who works in a Cabinet position is viewed as  
15 part of the Governor's staff?

16 A Loosely, yes, sir, that's correct.

17 Q And anyone who works in his office is part of his  
18 staff, right?

19 A Yes, sir.

20 Q And with respect to the First Lady's office at the  
21 Mansion, are those his staff or are they her staff or  
22 what?

23 A I guess to answer your question, they are, on a  
24 day-to-day basis, viewed as part of her staff. But at the  
25 end of the day they are ultimately Governor's staff as

**MARTIN KENT - CROSS - ASBILL**

2596

1 well.

2 Q Those folks ultimately report to you before, I mean,  
3 in the chain of command, they report to you before it  
4 would get to the Governor?

5 A Yes, sir.

6 Q So they would go to you if they had a problem, at  
7 least in the first instance?

8 A Typically, yes, sir.

9 Q All right. Now, you said, I believe, that it  
10 was -- that my client's primary interest and focus as the  
11 Governor was jobs in Virginia; is that correct?

12 A That was certainly the top of the priority list, yes,  
13 sir.

14 Q Other than public safety, and what did you mean by  
15 that?

16 A Well, obviously, public safety took priority over  
17 everything. Classic example would be if there is, you  
18 know, an emergency, no matter what we were doing, even if  
19 it was economic development, it would take a back seat to  
20 public safety. But other than public safety, the top  
21 priority of the Administration was economic development.

22 Q What were the third or fourth priorities?

23 A Education was probably amongst the top three or four.  
24 I would probably, if I had to rank them, I would say  
25 public safety, followed closely by economic development,

**MARTIN KENT - CROSS - ASBILL**

2597

1 education, and probably health.

2 Q All right. And you said it was very common for, at  
3 the Mansion, or to host events at the Mansion; is that  
4 correct?

5 A Yes, sir.

6 Q Do you have any sense of how many Mansion events  
7 there were during the four years that you were with the  
8 Governor's Office?

9 A I couldn't give you an exact number, but there were  
10 many.

11 Q Would 1,150 or so ring a bell?

12 A That's entirely possible, yes.

13 Q At any point in time, did you ever try to figure out  
14 after the investigation started, for example, how many  
15 events there were at the Mansion?

16 A I don't think I did at the Mansion. The Governor and  
17 I had discussed how many events, meetings he had taken and  
18 Cabinet members and myself had taken, and at that point in  
19 time, I did a very quick extrapolation by reaching out to  
20 several Cabinet members just to get an idea of how many  
21 meetings they felt they took, and I think the Governor  
22 took that information and extrapolated from that.

23 Q Okay. I'm sorry, were you going to say something  
24 else?

25 A No, that's it.

**MARTIN KENT - CROSS - ASBILL**

2598

1 Q You talked about the scheduling process. There was a  
2 protocol or a process for scheduling the Governor for  
3 various events?

4 A Yes. There were really two different processes. The  
5 first was sort of the day-to-day schedule, for lack of a  
6 better explanation, and that was really more the  
7 scheduler, Governor, occasionally myself, I was included  
8 in some of those discussions. But then there was a  
9 separate weekly scheduling process which would be  
10 typically invitations to go to Northern Virginia,  
11 invitations to go to Roanoke, invitations to go to  
12 Virginia Beach, events outside the office. And  
13 we -- staff had an initial meeting where we tried to sort  
14 through some of those to try to narrow the scope a little  
15 bit.

16 Q Okay. But there were constant requests being made  
17 for his time and attention; is that fair to say?

18 A Yes, it is.

19 Q Whatever the scheduling process was or the protocol  
20 was, sometimes it would get bypassed, either by mistake or  
21 because there wasn't enough time to go through the normal  
22 process?

23 A That happened, yes.

24 Q Would that -- would it ever be -- who would be people  
25 that would potentially interfere with the protocol in

**MARTIN KENT - CROSS - ASBILL**

2599

1       terms of trying to schedule something?

2       A     Well, people would call. People would call, and  
3           sometimes they would call the scheduler, sometimes they  
4           would call me, or sometimes they would call the Governor  
5           or he would run into them at particular events and ask to  
6           meet with him. Classic examples would be legislators.  
7           Whenever they were in town your schedule was kind of out  
8           of the window because they would come across the street  
9           and ask to speak to the Governor and wanted to speak to  
10          him immediately. So that happened.

11       Q     How about family members?

12       A     Yes.

13       Q     And they have the ability at times to try to redirect  
14          the schedule? At least potentially to redirect the  
15          schedule?

16       A     Yes.

17       Q     All right. And do you know whether or not that was  
18          in consultation with my client or was it just something  
19          that they wanted him to do and he may or may not agree?

20       A     I'm sure it happened both ways, you know. You could  
21          ask about a specific example and I could try to answer  
22          your question. But generally speaking, I'm sure it  
23          happened both ways.

24       Q     Okay. Did you have any protocol in place for taking  
25          a closer look at those sort of requests that were unusual

**MARTIN KENT - CROSS - ASBILL**

2600

1 or not the regular sort of process?

2 A No. You know, a lot of reliance was placed on the  
3 Governor's scheduler to really sort of know what he had on  
4 his schedule and to deal with those. If there was a  
5 question, an example was shown earlier about an event  
6 where she did bring it to my attention and asked for my  
7 input. But typically, she would handle that.

8 Q All right.

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

MARTIN KENT - CROSS - ASBILL

2601

1 Q You talked about everybody in the office working  
2 24/7. Who led the pack in terms of hardest working?

3 A The Governor did.

4 Q Outworked everybody else on the staff?

5 A No question.

6 Q Now, you talked about meetings that would occur,  
7 meetings on a weekly basis, or something, and these were  
8 Cabinet members, I believe, you were discussing that?

9 A Yes, sir.

10 Q And at those meetings, sometimes the Governor would  
11 ask somebody to look into something or to meet with  
12 somebody?

13 A He did.

14 Q All right. So, "Take a look at this and tell me what  
15 you think," basically? Is that the idea?

16 A That's generally the idea.

17 Q Or, "Meet with everybody and see if they got a good  
18 idea, and if so, do what you need to do"?

19 A Yes.

20 Q As those meetings, was the Governor ever more  
21 affirmative in terms of, "I want you to do this. I want  
22 you to take action on it. I want you to get this done"?

23 A No. That was not the Governor's MO. The Governor --  
24 you know, you could sense when it was something -- and it  
25 was typically in the realm of economic development. You

MARTIN KENT - CROSS - ASBILL

2602

1 could sense when it was something that he felt like we  
2 should spend time and look at. But no, there was never a  
3 situation where he demanded a response and a response -- a  
4 specific response at a specific time, no.

5 Q Did he know how to make it plain that he wanted  
6 something done?

7 A I'm sure he could. Sure.

8 Q Now, at any of these meetings that you talked about,  
9 that you talked about earlier today, did you ever hear my  
10 client ask anything to be done for Jonnie Williams or Star  
11 Scientific?

12 A No.

13 Q All right. With respect to board, board members, did  
14 you have any knowledge of my client ever appointing anyone  
15 to any board or commission that was in any way related to  
16 Star or related to Jonnie Williams?

17 A Not to my knowledge, no.

18 Q You talked about the UVA Board, I believe, and you  
19 said, I think in reference to that Board in particular,  
20 that those members of the Board, jealously guard their  
21 independence, despite having been appointed by the  
22 Governor?

23 A Yes, sir.

24 Q And there's some issue legally about whether or not  
25 they can be fired by the Governor or there's some other

1 process that would be required --

2 A There is.

3 Q -- in order to fire -- there is another process?

4 A No. There is -- there has -- there's been debate  
5 about how far the Governor's authority goes. I think it's  
6 pretty clear by the code that when there's -- when they  
7 have taken an inappropriate act, certainly in that  
8 situation he has the ability to act. But it's a little  
9 more gray when it comes to just general disagreement over  
10 a policy position.

11 Q If they did something illegal, he could fire them.  
12 But if they did something that disagreed -- you know, they  
13 disagreed with his policy on something, that would be a  
14 harder decision or a harder issue?

15 A Illegal or violate a university policy that's been  
16 established by the Board. But yes, that's generally  
17 correct.

18 Q With respect to -- so you were knowledgeable about  
19 the people that -- that Governor McDonnell appointed to  
20 boards and commissions? You were in that process?

21 A Not regularly. But on particular instances, the UVA  
22 example is a classic example, I was pulled into it because  
23 of the high profile nature of it. But typically, that  
24 process, as I mentioned previously, was handled by the  
25 Secretary of the Commonwealth.

1 Q And that would be Janet Kelly?

2 A Yes, sir. That is correct.

3 Q All right. With respect to the -- when you were  
4 involved in these issues like that, the high profile  
5 situation you described, did you believe that the Governor  
6 was appointing people to boards on merit?

7 A The term he used throughout the administration, going  
8 back to when we chose members of the Cabinet, all the way  
9 through, was the best and the brightest. Those are the  
10 terms that he used. He wanted the best and the brightest.

11 Q How did it work in terms of hiring the staff? Not  
12 the Cabinet folks or people on boards, but in terms of --  
13 obviously, he hired you. Did you then hire all the people  
14 under you or was the Governor involved in those hires as  
15 well?

16 A I never hired any high-level position without the  
17 Governor signing off on it. You know, there were  
18 positions, clerical positions where we had a need and  
19 quickly needed to fill it that I would make that decision  
20 on. But anything deputy agency head or higher, I asked  
21 the Governor to weigh in and approve.

22 Q And when you asked him to weigh in and approve, do  
23 you believe that the two of you collectively, in that  
24 situation, were hiring the best and the brightest you  
25 could?

1 A I believe so, yes. We certainly tried to.

2 Q Now, with respect to this UVA issue --

3 MR. ASBILL: Can we pull up 619, please.

4 Government Exhibit 619.

5 BY MR. ASBILL:

6 Q This is the letter to the Board members that you  
7 talked about previously.

8 A Okay.

9 Q I don't want to get into the details of the letter.  
10 I just want to talk to you generally about it. The letter  
11 is in evidence. What was that controversy about, just in  
12 a nutshell?

13 A There was an effort by certain members of the Board  
14 to remove President Sullivan as the President of the  
15 University of Virginia, and they initially took steps to  
16 do so. I believe she initially agreed to step down. Then  
17 she rescinded that offer. And it became a very high  
18 profile, public situation, and ultimately, she was  
19 reinstated as President.

20 Q All right. And that particular controversy occurred,  
21 what, in June of 2012? Is that when it occurred?

22 A I don't remember the exact date. But this is the  
23 date of the letter. So it must have been around that time  
24 frame, yes.

25 Q Do you recall the letter being contemporaneous with

1 the controversy?

2 A I'm -- it was. It was. A decision was made --  
3 because the matter had lingered for a period of time, I  
4 think the Governor made a decision that he had to do  
5 something to get the Board to make a decision one way or  
6 the other, and basically told them that if they failed to  
7 act, that they were not carrying out their  
8 responsibilities as members of the Board of Visitors and  
9 that he would take action.

10 Q All right. And he was very direct in terms of what  
11 he was going to do if they failed to take action and deal  
12 with this situation; is that right?

13 A He was.

14 Q Now, that particular controversy had nothing to do  
15 with Jonnie Williams or Star Scientific in any way, did  
16 it?

17 A Not to my knowledge. No.

18 Q All right. Let's talk about the Tobacco Commission.  
19 And I believe you talked that the appointees to that  
20 commission, it's some sort of joint process?

21 A It's a hybrid process. Yes, sir.

22 Q Okay. And the Secretary of Agriculture is the only  
23 person that the Governor appoints directly to that  
24 commission?

25 A No. I believe he appoints, by statute, actually, the

1 Secretary of Agriculture, the Secretary of Finance, and I  
2 believe it's the Secretary of Commerce and Trade. And I  
3 believe since that time, we may have even added  
4 Secretary -- no. That's, I'm sorry, a different board.  
5 Those three other Cabinet members.

6 Q Those are the Cabinet members --

7 A I believe so.

8 Q -- out of how many folks on the Board?

9 A There are over 30 in total. The Governor appoints a  
10 number, and then the legislature appoints a number as  
11 well.

12 Q And then the Board does what it wants or it does what  
13 the Governor tells them to do?

14 A Well, the Tobacco Commission is a little more  
15 complicated than that. The Tobacco Commission has what's  
16 referred to as an Executive Committee. And the Executive  
17 Committee, I think, makes a lot of preliminary decisions  
18 and then meets with the full Board and basically adopts  
19 those decisions. But they are independent of our office.

20 Q Okay. And to your knowledge, did Governor McDonnell  
21 ever appoint anyone to the Tobacco Commission Board that  
22 had any connection whatever to Star Scientific or Jonnie  
23 Williams?

24 A Not to my knowledge, no.

25 Q To your knowledge, did my client ever try to

1 influence the Tobacco Commission in any way either by  
2 testifying in front of them, calling them up on the phone,  
3 sending them an e-mail, whatever, to support anything that  
4 Jonnie Williams or Star Scientific may have been trying to  
5 get from the Tobacco Commission?

6 A Not to my knowledge, no.

7 Q I believe you said you didn't -- or you only met  
8 Mr. Williams one time; is that correct?

9 A Yes, sir. That's correct.

10 Q And did you ever talk to him on the phone or anything  
11 like that?

12 A I don't remember ever speaking with Mr. Williams but  
13 one time. And that was when we took a trip to New York.

14 Q Okay. Did you ever have discussions with my client  
15 about Jonnie Williams before the start of the  
16 investigation before the public knew about the existence  
17 of the investigation?

18 A Not specifically about Mr. Williams. As we discussed  
19 earlier, there was an incident driving his vehicle, which  
20 the focus of that conversation was not Mr. Williams. It  
21 was the fact that the Governor had driven the vehicle.  
22 But no, we, to my knowledge, did not have any  
23 conversations about Mr. Williams.

24 Q Prior to outside lawyers becoming involved when the  
25 investigation became public, going all the way back,

1 however long you've known the Governor, did he ever refuse  
2 to talk to you about anything you wanted to talk to him  
3 about?

4 A No.

5 Q Now, I believe you said that there was a time, at  
6 least one instance, when you were aware of somebody using  
7 the Governor's likeness or name to try to promote  
8 something without his permission, correct?

9 A Uh-huh.

10 Q And that related -- can you give me some more details  
11 about that? Did that relate to a product called Nu Skin  
12 and --

13 A I believe it did. And I believe it involved a  
14 company that Maureen -- at the time, she wasn't the First  
15 Lady -- was involved in.

16 Q And your understanding was that somehow his likeness  
17 and the fact that he was the Attorney General was being  
18 used to promote the product?

19 A Yes, sir.

20 Q And he was not aware of that?

21 A I don't believe he was. No, sir.

22 Q And when it came to his attention or your attention,  
23 then you all shut it down?

24 A Yes, sir.

25 Q No pushback from my client on that?

MARTIN KENT - CROSS - ASBILL

2610

1 A No, sir. I don't recall any pushback.

2 Q Now, the Smith Mountain Lake trip. That was the end  
3 of July 2011, correct?

4 A I believe that was what we saw. Yes, sir.

5 Q Okay. And you were obviously aware of that trip,  
6 correct?

7 A I was aware of that trip.

8 Q And you were aware that that was a gift from Jonnie  
9 Williams?

10 A I don't think I got into how it was valued and how it  
11 was reported. I did know that the Governor took a trip  
12 and that the home was, I believe, Jonnie Williams' home.  
13 I did know that. Yes, sir.

14 Q Okay. So regardless of exactly how it was reported,  
15 you knew that it was connected to Jonnie Williams and/or  
16 Star --

17 A I believe I did.

18 Q -- at the time the event occurred?

19 A I believe I did. Yes, sir.

20 Q All right. And you knew that fact well before the  
21 Mansion lunch, which was 30 days later, right?

22 A Yes. I would have. That's correct.

23 Q Okay. Now, Mr. Faulconer, I believe, asked you about  
24 were you aware of my client playing golf with Jonnie  
25 Williams or playing at Kinloch, correct?

1 A He did. Yes, sir.

2 Q And do you play golf or --

3 A I'm not very good. I play at golf.

4 Q Miniature golf?

5 A Better at miniature golf. Yes, sir.

6 Q And you say you were not aware of some of the golf  
7 outings that my client may have had --

8 A No, sir.

9 Q -- with Mr. Williams at Kinloch?

10 A No, sir.

11 Q How would you have -- I mean, other than it coming up  
12 in a conversation with my client, what are the other ways  
13 that you generally might be aware of something like that?

14 A Conversation. If it did or didn't show up on his  
15 calendar on any particular day, I may or may not have  
16 noticed it. But truthfully, if the Governor was away on  
17 vacation, in particular, or out of the office for personal  
18 things, I typically didn't focus on his calendar on any  
19 given day or time. It was only when he was acting as  
20 Governor that I would.

21 Q So if there were calendar events on a weekend, you  
22 would not review those, generally?

23 A They would typically have been sent. But it was  
24 rare. Unless I needed the Governor. If something came up  
25 and I needed to get him and get him immediately, I would

MARTIN KENT - CROSS - ASBILL

2612

1 refer back to his calendar, determine where he was, and  
2 then try to track him down.

3 Q Okay. But you had transparency into his calendar, to  
4 the extent things were calendared; is that correct?

5 A That's a fair statement. Yes.

6 Q Okay. And if something like a game of golf was not  
7 on the calendar, are there reasons why that might be other  
8 than trying to hide the game of golf?

9 A I'm sure there could be. Sure.

10 Q It could come up at the last minute or --

11 A Sure.

12 Q Do you know whether or not people got information  
13 from my client or from others that were, for some reason,  
14 mistakenly not on the calendar?

15 MR. FAULCONER: Objection, Your Honor. He's  
16 calling for him to speculate.

17 THE COURT: Sustained.

18 BY MR. ASBILL:

19 Q Now, the Ferrari. You looked at the schedule and saw  
20 that my client was scheduled to leave Smith Mountain Lake  
21 at around 7 p.m. on the 31st of July?

22 A Yes, sir.

23 Q Do you know if that's exactly when he left or not?

24 A No, sir, I do not.

25 Q Okay. But he was supposed to come back that night?

1 A Yes, sir.

2 Q All right. And then later on you find out, I guess,  
3 I think you said within a week or so, that the EPU people  
4 were upset about it?

5 A Yes, sir. It was sometime that week afterwards, I  
6 believe.

7 Q Okay. And you -- I mean, I don't want to use this  
8 word improperly, but you chastised the Governor for that?

9 A I didn't -- I didn't chastise the Governor. I  
10 reminded the Governor of their job, and that was to  
11 protect he and the First Lady, and stressed the fact that  
12 they couldn't do that if he's driving a vehicle and they  
13 are following behind.

14 Q Okay. And after you talked to him about that, he  
15 never did it again?

16 A To my knowledge, no, sir. He did not.

17 Q And prior to that time, had he ever driven himself  
18 against the wishes of the EPU?

19 A To my knowledge, no, sir.

20 Q Had he ever done anything against the wishes of the  
21 EPU that came to your attention?

22 A No, sir.

23 Q Ultimately, the decision to drive the car without the  
24 EPU, whether it was over their objection or not, his call?

25 A Yes, sir.

1 Q Did you understand it was difficult to have EPU  
2 people around you all the time?

3 A Absolutely.

4 MR. FAULCONER: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. ASBILL:

7 Q Did you know anything about the EPU eavesdropping on  
8 my client's conversations --

9 MR. FAULCONER: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. ASBILL:

12 Q Now, I believe you looked at Exhibit 189.

13 MR. ASBILL: Can you pull that back up for me,  
14 please.

15 BY MR. ASBILL:

16 Q This is an e-mail that you are not copied on?

17 A That's correct.

18 Q From my client to Bill Hazel?

19 A Yes, sir.

20 Q And this is the night that he gets back from Smith  
21 Mountain Lake?

22 A That's what -- that's what I've been told. Yes, sir.

23 Q Okay. It's at 11:29 p.m. on the 31st of July of  
24 2011, right?

25 A It appears to be. Yes, sir.

MARTIN KENT - CROSS - ASBILL

2615

1 Q And you're not copied that. Are you copied on  
2 everything that my client sends to Cabinet officers?

3 A No, sir. Not everything.

4 Q Do you have any reason to believe that you were not  
5 copied on this on purpose for some bad reason?

6 MR. FAULCONER: Objection. Calls for  
7 speculation.

8 THE COURT: Sustained.

9 BY MR. ASBILL:

10 Q With respect to why my client wanted Bill Hazel to  
11 have Keith or Matt or somebody on his staff attend this  
12 meeting the next day, do you have any transparency into  
13 that?

14 A This e-mail came to my attention when I was  
15 conducting a review.

16 MR. FAULCONER: Objection, Your Honor. We're  
17 getting into anything that came to his attention after the  
18 investigation. If he knew at the time, he can testify to  
19 that. But I object to any conversation about anything  
20 after the investigation.

21 THE COURT: You're talking about something you  
22 learned later?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Objection sustained.

25 BY MR. ASBILL:

MARTIN KENT - CROSS - ASBILL

2616

1 Q So at the -- at the time that this -- that this  
2 happened, basically, you don't know why my client wanted  
3 Bill Hazel to do this, right?

4 A No, sir.

5 MR. ASBILL: Let's go to Exhibit 635 for a  
6 minute.

7 BY MR. ASBILL:

8 Q This is an exhibit with your handwriting on it; is  
9 that correct?

10 A It is.

11 Q All right. And you don't have any recollection about  
12 ever talking to my client about that after you wrote those  
13 notes?

14 A It had to have occurred for me to have made the  
15 request. But specifics about a conversation, no, sir, I  
16 do not recall that.

17 Q Okay. But, again, didn't try to talk to him and he  
18 refused to talk to you, did he?

19 A No, sir. I can't say that.

20 Q All right.

21 MR. ASBILL: Let's go to Exhibit 206 that you  
22 were shown on direct. Can you blow that up, please.

23 BY MR. ASBILL:

24 Q So this is on the 16th of August, and from you to  
25 Jasen, right?

MARTIN KENT - CROSS - ASBILL

2617

1 A Yes, sir.

2 Q All right.

3 MR. ASBILL: Scroll up. Okay.

4 Let me go to 230.

5 BY MR. ASBILL:

6 Q This is the Governor's schedule for 8/30, the day of  
7 the Mansion lunch?

8 A Yes, sir. It appears to be.

9 Q And he had a pretty busy day that day?

10 A He did.

11 Q And this was overlaid by the earth, wind and fire  
12 events that everybody has talked about?

13 A It was.

14 Q You have no recollection, either on the 16th or  
15 between the 16th and the 30th, ever talking to my client  
16 about the Mansion lunch?

17 A No. I don't think I was aware of it until the 29th.  
18 And I did not discuss it with him that night.

19 Q All right. And do you know when he first became  
20 aware of it?

21 A I do not.

22 Q Do you have any reason to believe that he planned it  
23 or he organized it?

24 MR. FAULCONER: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. ASBILL:

2 Q You say you know Jerry Kilgore, right, and you talked  
3 to him in August on an earlier occasion? Was that the  
4 12th of August?

5 A I don't remember the exact date, but it was sometime  
6 in the August time frame, middle August time frame.

7 Q All right. And whenever you and Jerry were talking,  
8 who was with you, Jasen?

9 A Well, for that discussion?

10 Q Yeah. For the August 12th discussion.

11 A For that discussion, Jasen, myself. There were  
12 several members of the McGuireWoods legal team that were  
13 there, and I believe at one point the Governor actually  
14 was at that meeting as well.

15 Q All right. And so a lot of lawyers, outside lawyers?  
16 There was inside counsel?

17 A Yes, sir.

18 Q And you have no recollection that that discussion had  
19 anything at all to do with the Mansion lunch; is that  
20 correct?

21 A They were two separate discussions.

22 Q All right. So you learn about this Mansion lunch,  
23 basically, on the 30th; is that correct? One day before  
24 the event or --

25 A That would have been the 29th.

1 Q 29th. Excuse me.

2 A I believe so. Yes, sir.

3 Q All right. And it comes to your attention how?

4 A Through an e-mail that was forwarded to me by Tucker  
5 Martin.

6 Q All right. And when that e-mail was forwarded to  
7 you, you then -- you read it, obviously, and then you met  
8 with Tucker; is that correct?

9 A Actually, I met with Jasen.

10 Q Jasen. Excuse me.

11 A Yes, sir.

12 Q And did you meet with Tucker as well or just Jasen?

13 A I'm assume we did discuss it. He had sent it to us.  
14 But I recall specifically meeting with Jasen.

15 Q All right. And before you all took action, did you  
16 ever have a discussion with my client about it?

17 A No. It was the night before the event. There was a  
18 lot going on. My recollection is we saw it, and we  
19 attempted to address it as quickly as possible.

20 Q All right. And you thought that the -- you thought  
21 that the press release was essentially -- that Star was  
22 thinking about issuing was overaggressive or not  
23 appropriate --

24 A Yes.

25 Q -- in terms of your view?

1 A Yes, sir.

2 Q All right. So you all shut that down, correct?

3 A We did. Yes, sir.

4 Q Did you have any reason at all to believe that you  
5 were not doing something that my client would have wanted  
6 you to do?

7 MR. FAULCONER: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. ASBILL:

10 Q Did you ever later talk to my client about what you  
11 had done, in terms of revising the press release?

12 A In 2013, yes, sir, I did.

13 Q Pre -- pre the commencement of the investigation?

14 A No, sir.

15 Q Did my client, between the time of the lunch and the  
16 start of the investigation, ever give you any pushback on  
17 what you had done?

18 A No, sir.

19 Q Did you ever talk to Mary-Shea Sutherland about it?

20 A As I mentioned previously, based on the e-mail  
21 traffic, there had to have been some sort of conversation,  
22 I assume, with her to get more information. But beyond  
23 that, I don't recall any conversation. No, sir.

24 Q Did you inquire of her whether or not she was aware  
25 of whether or not my client knew about the existence of

1 the press release?

2 A That would be logical, based on my question to her in  
3 the e-mail, and I'm assuming I had to get more information  
4 about the event from her. But I can't sit here and tell  
5 you specifically how that conversation -- you know, how it  
6 played out. I just don't recall that.

7 Q But in any event, after you talked to her, you didn't  
8 talk to my client about it, correct?

9 A It was the night before the event, and we moved as  
10 quickly as possible, in the midst of everything else going  
11 on, to try to deal with it. No, sir, I did not.

12 Q Okay. Or at any time after the lunch itself?

13 MR. FAULCONER: Your Honor, this has been asked  
14 and answered.

15 THE COURT: Sustained.

16 BY MR. ASBILL:

17 Q Now, you talked about sort of a black book, some sort  
18 of a briefing book that the Governor would get before  
19 events, and it would be stuck in the elevator in the  
20 Mansion?

21 A He would get his schedule for the next day. It would  
22 typically either be given to him as he left, or if he had  
23 already left, it would be left in the elevator at the  
24 Mansion for him to get the night before the day.

25 Q Okay. And did you see the actual briefing memo that

1 he got about the Mansion lunch event before he went to the  
2 lunch?

3 A Did I review it or see it --

4 Q Yeah. Review the hard copy?

5 A Honestly, I don't remember. Again, there was so much  
6 going on that day. I just -- I can't say if I did or  
7 didn't.

8 Q Okay. You looked at an exhibit in this courtroom  
9 with that particular information on it, and there were  
10 some stars or asterisks, et cetera?

11 A Yes, sir.

12 Q And you said -- I believe you said that you thought  
13 that was my client's handwriting?

14 A It appeared to be. Yes, sir.

15 Q And do you know when, in time, those asterisks were  
16 placed on that document?

17 A No, sir.

18 Q All right. That particular event, the Mansion lunch,  
19 you did talk to Jerry Kilgore, you and Jasen did, on the  
20 29th; is that correct?

21 A I believe that's the case. Yes, sir.

22 Q And you just told him that, you know, this is not  
23 something that was appropriate, from your perspective.  
24 And you thought the meeting went well?

25 A I do. Yes, sir.

1 Q The conversation, I mean.

2 A I think he understood our concerns. Yes, sir.

3 Q And did you ever tell my client, before the  
4 investigation began, about that conversation that you had  
5 with Kilgore?

6 A Before this occurred?

7 Q Yeah.

8 A No, sir. I don't recall that.

9 Q Did you tell him about it afterwards that you had  
10 talked to Kilgore?

11 A Yes, sir.

12 Q Before the investigation commenced?

13 MR. FAULCONER: Objection, Your Honor, to  
14 conversations post investigation.

15 THE COURT: We don't know when -- in response to  
16 this last question --

17 THE WITNESS: Yes, sir.

18 THE COURT: -- are you talking about before this  
19 hit the media or sometime after?

20 THE WITNESS: No, sir.

21 THE COURT: The objection is sustained. Ask  
22 another question.

23 BY MR. ASBILL:

24 Q With respect to concern about the press release that  
25 you've been discussing or you've been describing in your

1 conferences with Mr. -- or conference with Jerry Kilgore,  
2 would I be accurate in saying that your concern was with  
3 the press release, not about the Governor?

4 A The concern was the press release and the inclusion  
5 of the Governor and the First Lady in the press release,  
6 the way it was worded.

7 Q Okay. But your concern was not about the Governor's  
8 conduct. It was about Star's press release, right?

9 A It was about the press release, yes, sir. That's  
10 correct.

11 Q Okay. You talked about an e-mail. I'm sorry. I  
12 don't even know the exhibit number. February 17th, 2012,  
13 with some -- that you didn't have any knowledge of, but  
14 you were cc'd on the e-mail.

15 Did that kind of thing happen often; that even if you  
16 were on an e-mail, you missed it, you overlooked it?

17 A It did. I mean, I probably averaged 3 or 400 e-mails  
18 a day, in addition to phone calls and personal visits.  
19 And I did my best to read as many of the e-mails I  
20 received on days I could, but inevitably, there were some  
21 e-mails that I just did not get to in the next day's work.

22 Q Do you have any knowledge of whether the Governor got  
23 more or fewer e-mails than you?

24 MR. FAULCONER: Objection, Your Honor.

25 THE COURT: He can answer that.

MARTIN KENT - CROSS - ASBILL

2625

1 A It wouldn't surprise me if the Governor received as  
2 many or more.

3 BY MR. ASBILL:

4 Q All right. The Healthcare Leaders Reception in the  
5 end of February 2012. I want to focus on that.

6 MR. ASBILL: Exhibit 345, please.

7 BY MR. ASBILL:

8 Q This is a calendar entry; is that correct?

9 A Appears to be. Yes, sir.

10 Q Reflecting a meeting between my client and Jonnie  
11 Williams that same day for 25 minutes?

12 A Appears to be. Yes, sir.

13 Q Okay. And that's in advance of the reception that  
14 night; is that correct?

15 A I'm not sure what time of day the reception was. But  
16 that appears to be in the afternoon. The reception was  
17 likely in the evening.

18 Q Okay.

19 A I did not attend the reception. So --

20 Q All right. No. I know you said you didn't attend  
21 the reception. But this meeting is scheduled, is on the  
22 record at the Governor's Office, correct?

23 A It appears to be. Yes, sir.

24 Q All right. And you were asked about a lot of  
25 handwritten notes by my client, four or five pages of

1 handwritten notes.

2 Do you know when those notes were prepared? In other  
3 words, do you know whether they were all in one day or in  
4 multiple days?

5 A No, sir, I do not.

6 Q Do you know whether they were all in one meeting or  
7 all about one meeting or they were about several  
8 discussions?

9 A Do not.

10 Q Do you know whether those notes reflect my client's  
11 views, opinion, analysis, as opposed to writing down what  
12 someone else said?

13 MR. FAULCONER: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. ASBILL:

16 Q You just don't really have any idea about the  
17 contents of that exhibit; is that right?

18 A Other than what I testified to, no, sir.

19 Q Okay. The event that you've described briefly, the  
20 February 13th, 2013, you say you learned that Maureen  
21 McDonnell was going to be talked to by the Virginia State  
22 Police; is that right?

23 A Yes, sir.

24 Q And how is it that you learned that that was going to  
25 occur?

1 A I believe I received a call from the Superintendent.

2 Q And what was your understanding of the purpose of the  
3 meeting?

4 MR. FAULCONER: Objection, Your Honor.

5 Relevance as to his understanding.

6 THE COURT: Sustained.

7 BY MR. ASBILL:

8 Q Did you talk to my client about the meeting before it  
9 occurred?

10 A Yes, sir.

11 Q Did you tell him the meeting had anything to do with  
12 Jonnie Williams?

13 A No, sir.

14 Q You talked to him after the meeting, correct?

15 A Yes, sir.

16 Q And you say he seemed upset at that point?

17 A Yes, sir.

18 Q Do you know why?

19 A The only thing I recall him saying was that the  
20 interview was not what it was purported to be about.

21 Q With respect to my client's personal finances, was  
22 that something that he discussed with you at any time  
23 during the years you worked for him?

24 A No, sir.

25 Q With respect to his marriage and any issues between

1 himself and his wife, are those things that he discussed  
2 with you?

3 A No, sir.

4 Q Correspondingly, are those the types of things that  
5 you ever brought up or raised with him and discussed with  
6 him?

7 A Only if I felt like it somehow spilled over into  
8 state government.

9 MR. ASBILL: Court's indulgence one moment, Your  
10 Honor.

11 BY MR. ASBILL:

12 Q Going back to the discussion with Jerry Kilgore about  
13 the Mansion lunch. Did Kilgore ever report to you in that  
14 discussion that my client had somehow promised Star that  
15 they could have a launch event at the Mansion?

16 MR. FAULCONER: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. ASBILL:

19 Q After the investigation became public -- that's,  
20 what, Easter March 2013?

21 A I couldn't tell you the exact date, but it was  
22 sometime around that time frame. Yes, sir.

23 Q And at that point, did you do anything to look into  
24 the allegations?

25 MR. FAULCONER: Objection, Your Honor.

1 THE COURT: Sustained.

2 BY MR. ASBILL:

3 Q Were you legally authorized to do anything --

4 MR. FAULCONER: Objection, Your Honor.

5 BY MR. ASBILL:

6 Q -- to look into it?

7 THE COURT: Sustained.

8 BY MR. ASBILL:

9 Q Did you take any action after the investigation  
10 broke --

11 MR. FAULCONER: Objection, Your Honor.

12 BY MR. ASBILL:

13 Q -- with respect to the subject matters of the  
14 investigation?

15 THE COURT: Sustained.

16 BY MR. ASBILL:

17 Q That was in March 2013 when the investigation broke  
18 or the public knew there was an investigation?

19 A It was sometime in that time frame. March, April  
20 time frame.

21 Q And you stayed until the following January; is that  
22 right?

23 A Yes, sir, I did.

24 MR. ASBILL: I have no further questions.

25 THE COURT: All right. We're going to stop now

MARTIN KENT - CROSS - BURCK

2630

1 for the morning break. We'll take 15 minutes.

2 (The jury left the courtroom.)

3 MR. DRY: Judge, I just wanted to apprise the  
4 Court. The government anticipates calling witnesses  
5 Skunda and Bridge tomorrow. And there's a pending motion  
6 to exclude filed by the defendants, and we filed a  
7 response. I don't know when the Court wants to take that  
8 up, but I just wanted to apprise the Court of that.

9 THE COURT: So I guess that means I'll have to  
10 look at it during lunch today. I'll deal with it.

11 MR. DRY: Thank you, Your Honor.

12 (Recess taken from 11:38 a.m. until 11:55 a.m.)

13 THE COURT: Hold up. We need the witness.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Cross for Ms. McDonnell?

16 MR. BURCK: Thank you, Your Honor.

17 **CROSS-EXAMINATION**

18 BY MR. BURCK:

19 Q Good morning, Mr. Kent.

20 A Good morning.

21 Q My name is Bill Burck, and I represent Ms. McDonnell.  
22 I have a handful of topics that I want to go through with  
23 you as fast as possible.

24 A Okay.

25 Q First, I just want to start with when Ms. McDonnell

1 was the First Lady of Virginia, she was not a state  
2 employee, right?

3 A That is correct.

4 Q She did not receive a salary?

5 A She did not.

6 Q And she was not a public official?

7 A That is correct.

8 Q She had no authority to hire or fire anyone, did she?

9 A That is correct.

10 Q Mary-Shea Sutherland, she left the Mansion in October  
11 of 2011; is that right?

12 A I believe that's correct. Yes.

13 Q And I think that technically, you fired her; is that  
14 right?

15 A She was involuntarily separated.

16 Q Involuntarily separated. And that was your -- your  
17 authority that she was voluntarily separated, right?

18 A That is correct.

19 Q It wasn't Ms. McDonnell that -- that involuntarily  
20 separated her?

21 A That is correct.

22 Q Now, in fact, Ms. McDonnell didn't ask you to  
23 terminate her at all, did she?

24 A No, she did not.

25 Q You were asked about an incident involving Nu Skin.

1 This is back when the Governor was the Attorney General.

2 Do you remember that testimony?

3 A I do.

4 Q And the -- the incident that you described was that  
5 Nu Skin was using Mr. McDonnell's likeness without his  
6 permission; is that right?

7 A That was my understanding. Yes.

8 Q And you guys put an end to that? "You" the staff.

9 A That is correct.

10 Q Did Ms. McDonnell, in any way, object or complain  
11 about that?

12 A I do not recall that. No.

13 Q Okay. Now, during the time that you were Chief of  
14 Staff, which is, I guess, the entire period of the  
15 Governor's time in office, you testified that he was the  
16 busiest person in the -- in the administration?

17 A No question.

18 Q And there were times that Ms. McDonnell came to you  
19 to try to get times scheduled with him; isn't that right?

20 A She didn't come to me. I think she came to the  
21 scheduler.

22 Q She came to the scheduler?

23 A She did. Yes, sir.

24 Q And you were aware of the times that she would come  
25 to the scheduler looking for time to be with

1 Mr. McDonnell?

2 A I was aware of several. I'm not sure if I was aware  
3 of all. But I was aware of several. Yes.

4 Q And you were aware that she found that it was very  
5 difficult to find time with him; isn't that right?

6 A That is probably correct. Yes.

7 Q Let's talk a little bit about the summer of 2011 and  
8 Mary-Shea Sutherland and your interactions.

9 A Sure.

10 Q Now, you were asked about a shopping trip, I think,  
11 by the prosecutor that you didn't know about at the time  
12 in April 2011?

13 A (Nodding head.)

14 Q You -- please, can you just answer --

15 A That's correct.

16 Q Thanks.

17 A I'm sorry. I was waiting for you to finish your  
18 question. I apologize.

19 Q No. That's okay.

20 Did Mary-Shea Sutherland ever tell you about the  
21 shopping trip?

22 A I do not recall her ever telling me about that. No.

23 Q And did she ever tell you about the wedding gift to  
24 Cailin that Mr. Williams provided?

25 A I do not believe she did. No.

1 Q Now, you testified that you recall that she said  
2 something about credit card debt of about \$20,000?

3 A That's my recollection, yes.

4 Q And "she" being Mary-Shea Sutherland. She told you  
5 about this?

6 A Referencing the First Lady.

7 Q Referencing the First Lady. And also Jonnie Williams  
8 came up in the same conversation?

9 A I believe it did. Yes. Yeah. It was -- again, it  
10 was in the midst of a very long protracted conversation  
11 about other issues, but I do believe she did. Yes.

12 Q So to you -- sitting here today, your best  
13 recollection is that Mary-Shea Sutherland told you  
14 something about \$20,000 worth of credit card debt that  
15 Jonnie Williams may have paid for the First Lady?

16 A That was the gist of it. Yes.

17 Q Okay. And, again, this is while Mary-Shea Sutherland  
18 was actually employed by the Mansion; isn't that right?

19 A That is correct.

20 Q Did Mary-Shea Sutherland tell you that she received a  
21 dress as a gift from Mr. Williams in April 2011?

22 A No, she did not.

23 Q Did she tell you that she was negotiating for a job  
24 or a position of some sort with Mr. Williams during the  
25 summer of 2011?

1 A No, she did not.

2 Q You testified about --

3 MR. BURCK: Can you please publish Government  
4 Exhibit 226, which is already in evidence.

5 BY MR. BURCK:

6 Q This is -- take a moment to look at it.

7 MR. BURCK: If you could blow it up a little bit  
8 so it's easier to read.

9 BY MR. BURCK:

10 Q This is a series of e-mails you testified about on  
11 direct concerning the press release, leading up to the  
12 launch?

13 A Yes.

14 Q Now, do you recall if Maureen McDonnell had any  
15 involvement at all, as far as you knew, in the press  
16 release?

17 A No. I have no specific knowledge of that.

18 Q And these -- this e-mail chain has -- Maureen  
19 McDonnell is not on it at all, is she?

20 A No, she's not.

21 Q Do you recall if, when the press release was changed,  
22 to make it more acceptable to the Mansion, to the Office  
23 of the Governor, that Ms. McDonnell complained in any way,  
24 pushed back in any way?

25 A No.

1 Q Okay.

2 MR. BURCK: You can take that down. Thank you.

3 BY MR. BURCK:

4 Q Do you recall that there was supposed to be a press  
5 conference of some sort in front of the Mansion for the  
6 launch event?

7 A That was my understanding. Yes.

8 Q Or the lunch or the launch event, whichever?

9 A Yes. That's my understanding.

10 Q And that was also canceled, right?

11 A That's -- that's what we focused on.

12 Q That's what you focused on. You and Jasen Eige --

13 A Yes.

14 Q -- and Tucker Martin?

15 A Tucker to a lesser extent, but primarily Jasen Eige  
16 and myself. Yes.

17 Q Okay. And did you ever hear any kind of pushback or  
18 complaint from the First Lady when that was canceled?

19 A No.

20 Q In December of 2011, there was SOEI training provided  
21 for the staff; isn't that right?

22 A December of 2011?

23 Q Yes.

24 A There was some provided at some point in time. I'm  
25 not sure of the exact date. But yes, there was.

1 Q Do you recall that the First Lady was provided  
2 training as part of that SOEI training?

3 A She -- I believe she was. Yes.

4 Q Do you recall why she was included in the training?

5 A I do. And I think the timing, in large measure, had  
6 to do with the change in transition of staffs. And she --  
7 we -- several new hires were made after Mary-Shea had left  
8 and a few other folks had left.

9 And I believe I spoke with my Deputy Chief Of Staff,  
10 Matt Conrad, who, I believe, is the one who conducted the  
11 training, and we felt like it was important for multiple  
12 reasons. One, to try to ensure there was some cohesion  
13 within the Governor's -- I mean the Mansion Office with  
14 staff, you know. And it was sort of the -- the unknown,  
15 and we felt like it was better to be safe than sorry and  
16 to have her, along with the staff at the Mansion, included  
17 to make sure that everyone was on record as to what the  
18 requirements were.

19 Q Okay. And the SOEI training, at some point you  
20 concluded that the First Lady did not have to file an SOEI  
21 because she's not a state employee, right?

22 A I believe our counsel's office did make that  
23 determination. Yes.

24 Q But the staff were employees of the -- of the state?

25 A They were. Yes.

1 Q So they would have to file SOEIs?

2 A Yes. They should.

3 Q Okay. So the First Lady was present for the reasons  
4 you mentioned, not because she had to file an SOEI?

5 A That's correct.

6 Q Okay. And you -- there was a transition in staff,  
7 you talked about, after Mary-Shea left --

8 A Yes.

9 Q -- or was terminated?

10 Can you tell us a little bit about that? There was  
11 three people that replaced Ms. Sutherland?

12 A No. There weren't three that replaced her. There  
13 was one individual that technically replaced her. There  
14 was another individual that was hired for a different  
15 purpose. That was -- part of her job was to deal with the  
16 First Lady's initiative dealing with military spouses.  
17 And so she, by default, was sort of folded into the work  
18 of the Mansion, but she was not really hired to replace  
19 Mary-Shea per se.

20 Q Okay. But when Mary-Shea left, is it fair to say  
21 that the First Lady's -- the people, the number of staff,  
22 that reported technically to the First Lady grew in  
23 number?

24 A There were more individuals. That is correct.

25 Q And was that partially because there was concern

1 about the First Lady's ability to manage her office?

2 A Well, one individual was a request of the First Lady,  
3 someone that she had known personally and was a personal  
4 aide to her. And she -- we hired her primarily at the  
5 First Lady's request.

6 There was an individual who, I would say, to answer  
7 your question, was the primary replacement for Mary-Shea.

8 And then there was another individual that I  
9 mentioned to you that was sort of morphed into part of the  
10 First Lady's initiatives that was actually working at the  
11 time, initially, for Public Safety and Commonwealth  
12 Preparedness.

13 Q Okay. I want to talk about the -- briefly, about the  
14 Virginia Health Leaders event.

15 A Okay.

16 Q Was it -- is it fair to say that it was not uncommon  
17 for any kind of event that was going to be held at the  
18 Mansion for the Governor's staff to ask the First Lady's  
19 staff whether or not they wanted to invite people to an  
20 event?

21 A I didn't get involved in that level of granularity,  
22 but that wouldn't surprise me if that request was made.

23 Q And not just for that event, but I'm talking more  
24 generally. That was a typical --

25 MR. FAULCONER: Objection, Your Honor. He said

MARTIN KENT - CROSS - BURCK

2640

1 he's not familiar.

2 THE COURT: Sustained.

3 BY MR. BURCK:

4 Q Going to February of 2013. There was a -- an  
5 interview conducted by -- by the Virginia State Police of  
6 Ms. McDonnell?

7 A Ms. McDonnell. Yes.

8 MR. BURCK: Please show the witness only, for  
9 identification purposes, RM-2028. And can you blow it up  
10 and then start at the bottom.

11 BY MR. BURCK:

12 Q Now, Mr. Kent, you testified that you recalled that  
13 you received a phone call from Virginia State Police in  
14 advance of that -- that interview. Do you recall that?

15 A I did.

16 Q Is this an e-mail from a Steven Flaherty to yourself,  
17 dated February 13, 2013?

18 A It appears to be. Yes.

19 Q Do you know who Mr. Flaherty or Colonel Flaherty is?

20 A He's the Superintendent of the Virginia State Police.

21 MR. BURCK: Your Honor, we would offer RM-2028.

22 THE COURT: It will be admitted.

23 MR. BURCK: Could you blow it up entirely so we  
24 can see the whole page?

25 BY MR. BURCK:

1 Q So starting at the bottom, this is an e-mail, again,  
2 from Mr. Flaherty to you on February 13th. It says,  
3 "Martin. We want to wrap up the Chef Todd case. Plan to  
4 go to the grand jury next week. If the First Lady is  
5 available Friday and can block off about two hours  
6 (probably won't need that long) to talk to Charlie Hagan  
7 and Tyler Kennedy, we would appreciate it. Thanks,  
8 Steve."

9 Do you see that?

10 A I do.

11 Q And above that, you respond, "Will talk with her  
12 tomorrow. Thanks, Steve," from Martin?

13 A That's correct.

14 Q And then immediately above that, it says, "Thanks."

15 Now, what was the Chef Todd case?

16 A That was a separate matter in the City of Richmond  
17 involving some alleged misappropriation of state assets,  
18 mainly, food, by the former chef of the Mansion.

19 Q And was that your understanding of what the agents  
20 were there to interview Ms. McDonnell about?

21 A That -- that was my understanding, yes.

22 Q Do you recall if they had mentioned to you that they  
23 wanted to talk with Jonnie Williams?

24 A No.

25 Q If you look at the top of the e-mail just briefly, it

1 says -- this is from you to Colonel Flaherty on the next  
2 day, February 14th. "She is pulling together her notes so  
3 she can refresh her memory for tomorrow. Go ahead and  
4 work through her office to schedule. Thanks, Martin."

5 And then above, that Colonel Flaherty says, "Thanks,  
6 Martin," right?

7 A Yes. That's correct.

8 Q So as of -- this is the day before the interview,  
9 which is on February 15th, as of that point, you  
10 understood that this interview was about the Chef Todd  
11 case, correct?

12 A That's correct.

13 Q And you had no idea it was also about the Jonnie  
14 Williams issue?

15 MR. FAULCONER: Objection, Your Honor.

16 THE COURT: He's already answered that.

17 BY MR. BURCK:

18 Q Now, prior to -- on the day of the interview on  
19 February 15th, did you -- were you planning to attend this  
20 interview with Ms. McDonnell?

21 A I had initially offered to attend the interview with  
22 her.

23 Q I'm sorry. Who did you offer that to?

24 A I believe I offered that to the Governor.

25 Q Okay. And what did the Governor say to you?

MARTIN KENT - CROSS - BURCK

2643

1 A At the time, I think he thought it was okay. And,  
2 you know, that was kind of the end of that conversation.  
3 I think the understanding was is that I would attend with  
4 her.

5 Q Okay. And did you attend with her?

6 A No.

7 Q What happened?

8 A I was contacted by Deputy Superintendent of State  
9 Police and notified that I would not be -- I would not be  
10 needed at the interview.

11 Q You would not be needed at the interview. But did  
12 you still have a choice to attend the interview?

13 A I don't think so.

14 Q You did not have a choice?

15 A It was made clear to me that I was not invited.

16 Q And that was made clear to you by whom?

17 A By the Deputy Superintendent.

18 Q Do you know if Ms. McDonnell took anyone with her  
19 into the interview?

20 A I do not know that she did.

21 Q Do you know if she took a lawyer with her into the  
22 lawyer?

23 A I do not believe she did.

24 Q Just a few last questions for you.

25 MR. BURCK: Just pulling up Government Exhibit

1 231. This has already been admitted into evidence.

2 BY MR. BURCK:

3 Q If you look at the second and third pages of that  
4 exhibit, you were asked about the handwriting. You  
5 thought you believed that it looked like the Governor's  
6 handwriting?

7 A That's correct.

8 Q And you were asked about stars that were placed next  
9 to people's names?

10 A Uh-huh.

11 Q And one of the stars is John Clore, and another one  
12 is Carrie Cantrell?

13 A Yes.

14 Q And the next page, Jasen Eige, John Laso. And then I  
15 think Roskamp and Roskamp are written down on the third  
16 page --

17 A Yes.

18 Q -- next to Diane Roskamp and Bob Roskamp. And  
19 Mary-Shea Sutherland has "1st Lady Office," right?

20 A Yes.

21 Q Do you see Jonnie Williams and Jonnie Williams, Jr.  
22 below Mary-Shea Sutherland on that list?

23 A Yes, I do.

24 Q Do you see any stars next to their names?

25 A I do not.

MARTIN KENT - CROSS - BURCK

2645

1 Q If you look, top of the page, above John Laso, Paul  
2 Ladenson?

3 A I do.

4 Q Do you see a star next to that name?

5 A I do not.

6 Q And prior page, David Dean, and Fiona Crawford. Do  
7 you see stars next to those names? It says Roskamp and  
8 Star Scientific?

9 A I do not.

10 MR. BURCK: You can take that down. Thanks.

11 BY MR. BURCK:

12 Q And then just some final questions for you. Are you  
13 aware of any -- during your time as Chief of Staff to the  
14 Governor, are you aware of any budget money going to Star  
15 Scientific or Jonnie Williams?

16 A No.

17 Q Are you aware of any economic grants going to Jonnie  
18 Williams or Star Scientific?

19 A No.

20 Q Are you aware of any Board appointments made to Star  
21 Scientific or Mr. Williams?

22 A No.

23 Q Are you aware any of legislation provided to or on  
24 behalf of Star Scientific or Mr. Williams?

25 A No.

MARTIN KENT - REDIRECT

2646

1 MR. BURCK: Your Honor, just a moment.

2 (Counsel conferring with co-counsel.)

3 MR. BURCK: No further questions, Your Honor.

4 THE COURT: Redirect?

5 MR. FAULCONER: Yes, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. FAULCONER:

8 Q Now, Mr. Kent, just to follow up real quick on  
9 something that Mr. Burck was just asking about with  
10 respect to state funds. Are you aware of what the default  
11 is for an event held at the Mansion in terms of what pays  
12 for an event at the Mansion?

13 A Who pays for an event at the Mansion?

14 Q Yeah. So if Sarah Scarbrough, for example, doesn't  
15 invoice anybody for an event, are you aware of what the  
16 default is of where that's paid out of?

17 A I would assume it would probably be the Governor's  
18 PAC.

19 Q Sorry. An event held at the Mansion, is that paid  
20 out of Mansion funds?

21 A No. You said the default if it wasn't paid for out  
22 of the Mansion.

23 Q I'm sorry. Let me rephrase the question --

24 A I may have misunderstood your question.

25 Q -- to be a little bit more accurate.

1 A Yeah.

2 Q If an event is just held at the Mansion --

3 A Yeah.

4 Q -- and no invoicing is done to the PAC or to any  
5 outside groups, what's your understanding of what the  
6 default is of who pays for?

7 A Typically, it would be paid for by the Cabinet  
8 secretary that has requested the event or the agency head  
9 that's requested the event.

10 Q And if no agency head pays for it, does it then come  
11 out of the Mansion budget?

12 A Yes. It would typically come out of the Mansion  
13 budget.

14 Q And is the person who would typically be monitoring  
15 that typically be Sarah Scarbrough?

16 A She would.

17 Q Now, you were asked a few questions about the  
18 interview with law enforcement on February 15th of  
19 Ms. McDonnell. And you discussed potentially going or you  
20 potentially offering to go?

21 A Uh-huh.

22 Q Just to be clear, were you offering to go as  
23 Ms. McDonnell's private personal attorney?

24 A No.

25 Q You were also asked some questions about Mary-Shea

1 Sutherland on cross-examination.

2 A Uh-huh.

3 Q And you were asked about whether or not she told you  
4 about any conversations she had with Jonnie Williams about  
5 employment.

6 A Uh-huh.

7 Q To be clear, in the summer of 2011, did Mary-Shea  
8 Sutherland tell you that she was looking for outside  
9 employment?

10 A She, most likely, did, in the midst of everything,  
11 but she never mentioned Jonnie Williams.

12 Q But was it a surprise to you that she was --

13 MR. BURCK: Objection, Your Honor.

14 BY MR. BURCK:

15 Q -- potentially looking for outside employment?

16 THE COURT: Overruled.

17 A No, it was not a surprise.

18 BY MR. FAULCONER:

19 Q And shortly before she left, do you recall whether or  
20 not Mr. McDonnell wanted, based on his conversations with  
21 you, wanted Mary-Shea Sutherland to stay on staff or  
22 whether he wanted her to leave?

23 A He initially wanted her to stay.

24 Q You also were asked about a couple of conversations  
25 involving Nu Skin, the product endorsement type thing that

1 happened before Mr. McDonnell took office as Governor.

2 And I believe either Mr. Asbill or Mr. Burck asked you

3 about whether or not you got any pushback from

4 Ms. McDonnell about that. Do you remember that question?

5 A I do.

6 Q To be clear, did you have any conversation with

7 Ms. McDonnell about the Nu Skin, whatever that event was?

8 A No.

9 Q You were also asked about -- I'd like to go back for

10 just a moment to the interview with law enforcement --

11 A Uh-huh.

12 Q -- of Ms. McDonnell. Did Mr. McDonnell or

13 Ms. McDonnell, to your knowledge, ever ask you about

14 having a personal attorney there for Ms. McDonnell in that

15 interview?

16 A I don't remember they ever asked me about it.

17 Q So going back to -- past the Nu Skin, and then now

18 into the press release for the event at the Mansion in

19 late August of 2011. And you were asked about whether or

20 not Ms. McDonnell pushed back on you, whatever you and

21 Mr. Eige did with that press release?

22 A Uh-huh.

23 Q To be clear, did you have any conversation with

24 Ms. McDonnell in which she would have pushed back?

25 A No.

SARA WILSON - DIRECT

2650

1 Q You were also asked about Mr. McDonnell and whether  
2 he pushed back. Again, did you have any conversation with  
3 Mr. McDonnell about that?

4 A No.

5 MR. FAULCONER: One moment, Your Honor.

6 (Counsel conferring with co-counsel.

7 MR. FAULCONER: No further questions.

8 THE COURT: All right, sir. You may stand down.

9 Thank you very much.

10 THE WITNESS: Yes, sir. Thank you.

11 (Witness stood aside.)

12 THE COURT: Call your next witness, please.

13 MS. ABER: The United States calls Sara Wilson.

14 **SARA WILSON,**

15 called as a witness by and on behalf of the government,  
16 having been first duly sworn by the Clerk, was examined  
17 and testified as follows:

18 **DIRECT EXAMINATION**

19 BY MS. ABER:

20 Q Good afternoon, Ms. Wilson.

21 A Good afternoon.

22 Q Please state your name, and spell your first and last  
23 for the record.

24 A Sara Redding Wilson. And it's S-A-R-A, W-I-L-S-O-N.

25 Q What is your current title?

SARA WILSON - DIRECT

2651

1 A I am the Virginia Department of Human Resource  
2 Management Director.

3 Q Tell the jury, please, what that involves.

4 A I'm head of human resources. That -- one of the  
5 things I manage is healthcare, EEO, any type of fairness  
6 and equity type of issues, human resource policy for the  
7 state. Any kinds of things like that that relate to  
8 people. Worker's compensation. Various human resource  
9 issues.

10 Q Do you work within the office of a Cabinet secretary?

11 A I do. I work within the Office of the Secretary of  
12 Administration.

13 Q How long have you had this job?

14 A I've had this job since April 1998. This is my fifth  
15 governor.

16 Q So does that mean you worked in the administration of  
17 Governor Robert McDonnell?

18 A Yes, it does.

19 Q And during that administration, to which Cabinet  
20 secretary did you report?

21 A Secretary of Administration.

22 Q And what was her name?

23 A Lisa Hicks-Thomas.

24 Q Is it fair to say that you oversee, in part of your  
25 many hats, the health plan for the employees of the

SARA WILSON - DIRECT

2652

1 Commonwealth of Virginia?

2 A Yes, ma'am.

3 Q Now, are you familiar with a company called Star  
4 Scientific?

5 A I am.

6 Q Did you have a meeting with someone from Star  
7 Scientific on February 29th, 2012?

8 A I did.

9 Q And who was that?

10 A David Dean.

11 Q And did he make an appointment or did he just sort of  
12 swing by?

13 A He was a cold call. Just walked in, asked if I had  
14 time to meet with him, and I did. So I met with him.

15 Q Is it common for folks to just knock on your door,  
16 swing by?

17 A Has it been done? Yes. Is it the most common? No.  
18 But it's not unheard of.

19 Q Now, at that time --

20 A And it was his lucky day. He didn't have to wait.

21 Q At that time, what did you understand that David Dean  
22 did for Star Scientific?

23 A He was involved in sales and marketing for Star  
24 Scientific.

25 Q And, in essence, what did David Dean want from you in

SARA WILSON - DIRECT

2653

1 that meeting? What was his ask?

2 A He walked into the meeting. I said, "What can I do  
3 for you? What is it you want?"

4 And he said, "I would like Anatabloc to be covered by  
5 the employee health plan."

6 And I said, "Well what is this? Is this a drug? Is  
7 it covered by the FDA? What is it?"

8 And he said, "Oh, no. No. No. This is a dietary  
9 supplement."

10 And I said, "Well, that's going to make this meeting  
11 really short because we don't cover dietary supplements in  
12 the state health plan."

13 Q Did you ask Mr. Dean about studies of Anatabloc,  
14 scientific studies?

15 A Oh, yes. Yes. Because he's a salesman. He's a good  
16 salesman. And he talked about who was taking it and all  
17 the people interested in it. And I wanted to see studies.  
18 I wanted to see the scientific research behind this. Even  
19 though we didn't cover it, I was very interested in  
20 results. And we have a lot of employees that have -- that  
21 need things that would be anti-inflammatory. So I looked  
22 for detailed scientific information.

23 Q Did he say anything about having state employees  
24 participate in a pilot research study?

25 A At some point in time, I've talked to him several

SARA WILSON - DIRECT

2654

1 times, he may have mentioned it. But employees can  
2 participate in any kind of study. There's that 1 800 on  
3 the billboard, "If you have these kind of symptoms, call."  
4 They are free to participate, but it's not anything that  
5 we would sponsor.

6 Q Okay. So after you sent Mr. Dean on his way, did you  
7 see him later that evening?

8 A Yes, I did.

9 Q And where did that happen?

10 A At the Executive Mansion.

11 Q For what kind of event at the Executive Mansion?

12 A I believe it was called Health Leaders meeting or  
13 Leaders in Healthcare. Something along that line.

14 Q Did you also briefly meet a gentleman named Jonnie  
15 Williams at that reception?

16 A Briefly.

17 Q Okay. Now, moving forward in time, almost a couple  
18 weeks, were you present at a meeting with Mr. McDonnell on  
19 March 21st, 2012?

20 A 21st. Yes. Yes, ma'am.

21 Q On or about?

22 A Yes. 21st.

23 Q Who else was at this meeting?

24 A Lisa Hicks-Thomas, Martin Kent. And others may have  
25 come and gone, but those two were there for the duration.

SARA WILSON - DIRECT

2655

1 Q And Lisa Hicks-Thomas was your boss at the time,  
2 right?

3 A Yes, ma'am.

4 Q Where did the meeting take place?

5 A Governor's Office.

6 Q So the Governor was present?

7 A The Governor was present.

8 Q Okay. What was the purpose of this particular  
9 meeting?

10 A We were talking about healthcare.

11 Q Was there any particular aspect that related to your  
12 job and the Virginia healthcare plan for employees?

13 A Yes. He was very interested in implementing a  
14 consumer-driven health plan, and we were always giving him  
15 updates on that particular item. Of course, I always try  
16 to get in employee compensation and other issues when I  
17 have an audience with the Governor, but the primary  
18 meeting was for healthcare.

19 Q In a nutshell, can you tell the jury what a  
20 consumer-driven healthcare plan is?

21 A A consumer-driven healthcare plan is a plan that  
22 we've put in place to try and get employees to really know  
23 their numbers and be much more engaged in their health,  
24 taking care of themselves. And we give them tools so that  
25 they can understand the quality and cost from their

SARA WILSON - DIRECT

2656

1 providers where you can go look it up on-line to see what  
2 certain procedures cost or what providers charge. So they  
3 have the tools.

4 And then the big difference from a regular plan is  
5 that they pay more out of pocket. But to offset that, the  
6 employer gives them cash. So that we give them cash for  
7 them and for their spouse, and then they can earn  
8 additional funds, what we call do rights. Like if you go  
9 to the doctors, you can get a reward. If you get your flu  
10 shot, you can get a reward. So would get additional  
11 rewards to put into your account. And anything you don't  
12 spend rolls over for your own account for the next year  
13 and keeps rolling over and over and over. So it's your  
14 money to spend on healthcare.

15 So the concept is is that if you're an employee  
16 spending your money, you're going to be a good shopper.  
17 And that's what we're looking for the consumer to be a  
18 good shopper. Because if they are, then they win and so  
19 does the state plan, which also means all other state  
20 employees would win too because hopefully the cost would  
21 drop.

22 Q Now, based on your conversations with Mr. McDonnell  
23 during the administration, would you say that he was a  
24 proponent of this consumer-driven plan?

25 A Oh, he was very much in -- very, very interested in

SARA WILSON - DIRECT

2657

1 the consumer-driven plan. Yes.

2 Q Now, at this meeting on March 21st, did Mr. McDonnell  
3 make any reference to Anatabloc?

4 A At the end of the meeting, he did.

5 Q Okay. Tell the jury what exactly happened, to the  
6 best of your --

7 A He was mentioning -- we were talking about all these  
8 issues, and he pulled out a bottle, you know, one of those  
9 small bottles, of Anatabloc and talked about how much it  
10 had helped him and his wife.

11 Q Did you try to respond to him?

12 A I did try to respond to tell him that I had already  
13 met with these people. But there was a lot of  
14 conversation, and so I just didn't finish the -- I didn't  
15 finish my thought with him to tell him I had already met  
16 with these people.

17 Q Had you ever seen Mr. McDonnell bring out a product  
18 during a meeting like this?

19 A No.

20 Q Now, after the meeting had finished, did you walk out  
21 with your boss, the Secretary of Administration, Lisa  
22 Hicks-Thomas?

23 A I did.

24 Q Did you two ladies have a conversation?

25 A We did.

SARA WILSON - DIRECT

2658

1 Q And tell the jury what you recall about that  
2 conversation.

3 MR. BROWNLEE: Objection, Your Honor. Hearsay.

4 THE COURT: Overruled.

5 A I participated in this conversation. And when we  
6 left the meeting, Lisa turned around and looked at me and  
7 said, "He wants us to meet with these people."

8 And I said, "I didn't hear that. He never asked" --  
9 "there was no specific ask in the meeting."

10 And she said, "Well, let's go down and" -- and she  
11 said, "Well, trust me. That's what he wants."

12 And we walked down to her office and we Googled it,  
13 because I understood from David Dean that it was being  
14 sold by GNC, but I had never scoped it out. So we pulled  
15 it up and looked at the price and looked at how it was  
16 being sold. And I explained to Lisa the kinds of things  
17 that I mentioned with David Dean; that, no, we wouldn't  
18 cover it, but I did offer to him a chance to give -- if  
19 it's marketed publicly, if he wanted to give an employee  
20 discount, we'd post it on the website, if employees wanted  
21 a discount, and I never heard back from them on that.

22 Q Okay.

23 MS. ABER: One moment, please, Your Honor.

24 (Counsel conferring with co-counsel.)

25 MS. ABER: I have no further questions, Your

1 Honor. Thank you.

2 THE COURT: All right. Anything for  
3 Mr. McDonnell?

4 **CROSS-EXAMINATION**

5 BY MR. BROWNLEE:

6 Q Good afternoon, Ms. Wilson.

7 A Good afternoon.

8 Q My name is John Brownlee. I represent Bob McDonnell,  
9 and I have a few questions for you today.

10 A All right.

11 Q Just to review, you were first appointed to the  
12 government by Governor Gilmore in 1998; is that correct?

13 A That's correct.

14 Q And I believe you've testified that you're now on  
15 your fifth governor?

16 A Yes, sir.

17 Q Okay. And is it fair to say that with regard to  
18 healthcare policy and this consumer-driven policy that you  
19 talked about, that this was something that Governor  
20 McDonnell was very interested in from the very beginning  
21 of his administration?

22 A Absolutely.

23 Q Okay. And I believe you testified that you met with  
24 him regularly on budget issues; is that right?

25 A Well, if I met with the Governor, generally, it was

1 budget, but the topic was always involving healthcare  
2 because it is a big driver for us for the budget.

3 Q Okay. Just to talk about this first meeting, this  
4 meeting with David Dean. I believe you testified this was  
5 a cold call. So he just --

6 A Cold call. Just walked in.

7 Q Wanted to talk?

8 A "Can we talk?" And I said, "Okay."

9 Q All right. And is it fair to say within -- because  
10 you are the Director of Human -- let me make sure I get  
11 this right -- the Human Resources Management, that this  
12 happens somewhat frequently that you meet with these types  
13 of sales reps?

14 A I get vendors all the time. Call all the time. And  
15 we will meet with everybody. Usually they make an  
16 appointment.

17 Q Okay.

18 A But I do meet with anybody that asks to have a  
19 meeting.

20 Q All right. And you see part of your job is to kind  
21 of hear them out?

22 A That's part of my job, to listen to them. And  
23 anything that looks like it has merit to further along,  
24 then we move it up to the healthcare team.

25 Q Okay. And Mr. Dean, according to your testimony,

1 wanted Anatabloc added to the state employee health plan;  
2 is that correct?

3 A That's what he asked for.

4 Q All right. And you told him no?

5 A And I said, "Well, this will be a short meeting."

6 Yes, I told him no.

7 Q Okay. And at that point he said he would try to -- I  
8 think you -- is it true that you told him that you needed  
9 to see some science behind this?

10 A I was interested in hearing -- I mean, he was an  
11 engaging fellow. I was interested in hearing the details.  
12 And if -- you know, somebody has to come up with a new  
13 product sometime, and so I wanted to see the research. It  
14 sounded like it was not ready for prime time, but I was  
15 really interested in the scientific evidence that would  
16 support it --

17 Q Okay.

18 A -- to keep my eye on it.

19 Q Okay. And so as the meeting left, he said he would  
20 try to follow up with you at some later date; is that  
21 correct?

22 A He would give me additional information at a later  
23 date. Yes, sir.

24 Q Okay. Now, with regard to that meeting, best of your  
25 knowledge, Bob McDonnell didn't have anything to do with

1 that; is that correct?

2 A No. From best of my knowledge, this was a salesman  
3 trying to do his job, cold call on a -- somebody with the  
4 health plan where his product could be -- he thought could  
5 be benefited.

6 Q Okay.

7 A No. I had no idea -- I didn't -- never assumed it  
8 was from the Governor.

9 Q Okay.

10 A Thought it was a cold call from the company.

11 Q Okay. Let me move to this Healthcare Leaders  
12 Reception. You said that you attended that evening --

13 A I did.

14 Q -- in February?

15 That you saw Mr. Dean that evening?

16 A I did.

17 Q This was the gentleman who had just dropped in on  
18 you --

19 A Yes.

20 Q -- a few hours before?

21 A He must have been killing time or something. He came  
22 to see me. I don't know.

23 Q Okay. And did you see Bob McDonnell that night?

24 A I did.

25 Q Okay. Did he come by and talk to you? Do you

1 recall?

2 A I don't know if I talked to him. But I saw him. He  
3 was busy.

4 Q All right. He didn't come by and --

5 A It could easily have. I don't recall. But it would  
6 not be uncommon for him to acknowledge your presence and  
7 say hello.

8 Q Okay.

9 A But I cannot recall specifically whether he did at  
10 that time or not.

11 Q Okay. Let me -- now, you had a second meeting with  
12 Mr. Dean; is that correct?

13 A I did.

14 Q Okay. And this is, I guess, the follow-up to his  
15 original; is that correct?

16 A That's correct.

17 Q Okay. And at this second meeting, did he bring some  
18 slides?

19 A He brought a PowerPoint presentation.

20 Q Okay. And let me --

21 MR. BROWNLEE: Could we pull up, please,  
22 RM-1448 -- just for the witness -- 0001.

23 BY MR. BROWNLEE:

24 Q And does this look like at least the front slide and  
25 the other slides of the --

1 A These slides. Yes.

2 Q Okay. And there was a --

3 A Yes.

4 Q These are these other folks.

5 A Uh-huh.

6 MR. BROWNLEE: Your Honor, we would move  
7 RM-1448-01 through 31 into evidence.

8 THE COURT: It will be admitted.

9 MR. BROWNLEE: Thank you, Your Honor.

10 BY MR. BROWNLEE:

11 Q And so this is the package of materials that he left  
12 for you to take a look at; is that correct?

13 A That was his leave behind, yes, sir.

14 Q Okay. And fair to say that you reviewed these?

15 A I did.

16 Q Okay. And --

17 A We reviewed them together.

18 Q Okay. And after that, did you, once again, tell him  
19 that -- first of all, State of Virginia, your office, this  
20 kind of stuff doesn't go on your formulary; is that  
21 correct?

22 A Oh, he knows that.

23 Q Okay.

24 A He knew that.

25 Q Okay.

1 A I think he was just following up that -- I had asked  
2 for specific details, and this was his -- this was his  
3 specific detail, I think.

4 Q Okay. Fair to say this didn't convince you to --

5 A No. This is not what I had in mind. I was looking  
6 for a scientific document, you know, where there were  
7 studies done and research done and the probabilities and  
8 percentages of the study. I consider this more marketing  
9 material.

10 Q Okay. So once again, he left without getting any of  
11 your assistance?

12 A That's correct.

13 Q Okay. And Bob McDonnell didn't have anything to do  
14 with this meeting?

15 A Not that I'm aware of. Not to my knowledge at all,  
16 huh-uh.

17 Q Okay. I mean, he never asked you --

18 A Never.

19 Q Now, I want to touch, finally, on this meeting that  
20 Ms. Aber talked about in the Governor's Office.

21 A Yes.

22 Q And this was on March 21; is that correct?

23 A That's correct.

24 Q Okay. And this meeting talked about this rollout of  
25 this consumer-driven healthcare plan; is that correct?

1 A Yes, sir.

2 Q Okay. And I think you testified that at some point  
3 at the end of the meeting Mr. McDonnell pulled out a  
4 bottle of Anatabloc and talked about the fact that he took  
5 it and that it had helped him; is that --

6 A That's correct.

7 Q And you testified that you were talking about  
8 numbers. Were those numbers, like cholesterol numbers and  
9 blood numbers? Things that people refer to in their own  
10 health?

11 A Yes. We were trying to get employees -- one of the  
12 things about a consumer-driven health plan is to get  
13 employees to know their numbers. Whether it's their blood  
14 pressure, their BMI, their --

15 Q What is BMI, for the record?

16 A We have -- it's -- it is the measure, really, of  
17 whether you're overweight or not.

18 Q Okay.

19 A And so that's -- we are really interested in that  
20 because if you are, it has a collateral impact on a lot of  
21 other diseases --

22 Q Okay.

23 A -- which raises the cost of the healthcare. So we're  
24 trying to get everybody to do right and do all the things  
25 to help them be healthier. And if they're healthier, then

1 they're at work more, and they are -- we get the work  
2 done, and they are better and healthier.

3 Q All right. Do you remember, if you recall, one of  
4 the numbers that was discussed was something called  
5 C-reactive protein? Do you recall that?

6 A I don't recall that, but it could easily have been  
7 discussed. But I am familiar with C-reactive protein.

8 Q All right. And is that a number or a marker --

9 A That's an inflammatory piece to -- that goes with  
10 that, that measures that.

11 Q All right. And that has some indication of the  
12 status of your heart. Is that fair?

13 A Yes.

14 Q Okay. Now, I believe you stated before that it was  
15 your view that when he pulled this out, that it was like  
16 someone would pull out and say, "I like an Advil gel cap  
17 over Tylenol"; is that correct?

18 A He pulled it out. I didn't know why he pulled it  
19 out. I mean, for me, it could say -- I would say, "I like  
20 Advil gel caps over Aleve." I had no idea why he pulled  
21 it out because there was no ask. There was nothing there.  
22 He did pull it out of his pocket, though, and talk about  
23 it. It was personal.

24 Q Okay. Now, Ms. Aber talked with you about -- after  
25 the meeting you had this conversation with Ms. Hicks --

SARA WILSON - CROSS - BROWNLEE

2668

1 Secretary Hicks-Thomas; is that correct?

2 A Yes.

3 Q And there was some confusion between the two as to  
4 whether or not -- exactly what Mr. McDonnell had said in  
5 the meeting?

6 A Well, I don't know if there was -- I did not hear him  
7 ask for anything, and she thought that -- it was my -- my  
8 recollection that she said, "He wants us to contact them."  
9 And that wasn't my recollection at all because he didn't  
10 say that.

11 Q Okay.

12 A And I had already met with these people.

13 Q Okay. And so then you went and --

14 A Googled them.

15 Q -- you looked it up on -- on Google?

16 A We Googled them.

17 Q And Googled them. Okay. Fair enough. Now, you did  
18 have on your calendar, did you not, just scheduled for the  
19 next day, this meeting with Dean that you just talked  
20 about?

21 A That was just a follow-up meeting from our first  
22 meeting.

23 Q Okay. But that didn't have anything to do with Bob  
24 McDonnell?

25 A No.

1 Q Okay. All right. And after that, were there ever  
2 any other follow-up or any additional meetings or anything  
3 about Anatabloc or -- or Star Scientific with you?

4 A The only issue that I -- when we went down, as we  
5 walked down to Secretary Lisa Hicks-Thomas' office, I  
6 explained the history I had had with learning about Star  
7 Scientific, and I explained to her that David Dean had  
8 been to see me, that I told him it was not covered, that  
9 I -- I did offer an employee discount if they wanted to  
10 offer that, and I had not heard back.

11 We Googled them, and I said, "I'll keep you posted if  
12 I hear anything more about it. And to date, we've not  
13 even heard back on the discount for state employees. So  
14 we've really not talked about it since.

15 Q Okay.

16 A I mean, other than related to something like that.  
17 But no. Never followed up.

18 MR. BROWNLEE: All right. Great.

19 Thank you, Your Honor.

20 Thank you.

21 THE COURT: All right.

22 MR. KOFFMANN: Nothing for Ms. McDonnell.

23 THE COURT: All right. Cross for Ms. --

24 MR. KOFFMANN: Nothing for Ms. McDonnell.

25 THE COURT: All right. Any redirect?

SARA WILSON - REDIRECT

2670

1 MS. ABER: Yes, Your Honor.

2 **REDIRECT EXAMINATION**

3 BY MS. ABER:

4 Q Two questions. Although every lawyer says that and  
5 it's four. Why, Ms. Wilson, did you have an instinct to  
6 say that you had already met with the Star Scientific  
7 folks if you didn't think that Mr. McDonnell was asking  
8 for anything?

9 A Because he was mentioning about a product, and I  
10 didn't think anybody else in the room knew about it. I  
11 wanted him -- I had an instinct to say, "Yes, I was  
12 familiar with the product."

13 Q Okay. Second question.

14 A If you mentioned something to me, I would tell you if  
15 I knew about it or not.

16 Q Yes, ma'am. Second question. I believe on  
17 cross-examination you said you didn't know why  
18 Mr. McDonnell pulled the bottle out of his pocket.

19 A That's correct.

20 Q Were you aware that Mr. McDonnell had received a  
21 50,000 loan from --

22 MR. BROWNLEE: Objection, Your Honor.

23 BY MS. ABER:

24 Q -- Mr. Williams?

25 THE COURT: Sustained.

1 MS. ABER: Then I have no further questions,  
2 Your Honor. Thank you.

3 THE COURT: All right. Thank you, ma'am. You  
4 may stand down.

5 (Witness stood aside.)

6 THE COURT: All right. I think we're going to  
7 go ahead and stop now for lunch. If you all could come  
8 back at 2:00. It's about a quarter of now. Come back at  
9 2:00, and we'll get started with the afternoon session.

10 (The jury left the courtroom.)

11 THE COURT: I'm going to resolve this Skunda and  
12 Bridge matter at the end of the day. We'll probably send  
13 the jury home, and then we'll take a few minutes to deal  
14 with it. And I -- we didn't get a written reply from the  
15 defendants, I don't believe, but we'll --

16 MR. BURNHAM: We just filed it.

17 THE COURT: You just filed it?

18 MR. BURNHAM: Yes, sir, Your Honor. Twenty  
19 minutes ago.

20 THE COURT: Oh, okay. Well, I haven't seen it  
21 yet. Then that will save us some time this afternoon,  
22 then. So, you know, I'll give you all a few minutes to  
23 say whatever you have to say, and then I'll resolve it so  
24 we'll know what we're doing tomorrow. All right. Thank  
25 you.

## LISA HICKS-THOMAS - DIRECT

2672

3 THE COURT: Let's bring in the jury, please.

4 (The jury entered the courtroom.)

5 All right, government?

6 MS. ABER: The United States calls Lisa  
7 Hicks-Thomas.

8 LISA HICKS-THOMAS,

9 called as a witness by and on behalf of the government,  
10 having been first duly sworn by the Clerk, was examined  
11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ABER:

14 Q Good afternoon.

15 A Good afternoon.

16 Q Please state your name and spell it for the record.

17 A It is Lisa Hicks-Thomas, L-I-S-A, H-I-C-K-S -  
18 T-H-O-M-A-S.

19 Q Did you previously serve in the Administration of  
20 Governor Robert McDonnell?

21 | A Yes I did

22 Q In what capacity?

23 A T was the Secretary of Administration

24 Q Can you tell the jury briefly what a Secretary of  
25 Administration does?

**LISA HICKS-THOMAS - DIRECT**

2673

1 A Sure. The Secretary of Administration is a member of  
2 the Governor's Cabinet, tasked with basically the  
3 responsibility of running the back office of state  
4 government. And I had a number of agencies that reported  
5 to me, including the Department of Human Resource  
6 Management, the Department of General Services, the State  
7 Board of Elections, the State Compensation Board, the  
8 Department of Employee Dispute Resolution, the Department  
9 of Minority Business Enterprise, and the State  
10 Compensation Board. I think I said that.

11 Q Did a woman named Sara Wilson report to you?

12 A Yes, she did. She was the head of the Department of  
13 Human Resource Management.

14 Q And to whom did you report?

15 A I reported to the Governor.

16 Q So fair to say you are part of or were part of the  
17 Cabinet?

18 A Yes.

19 Q Could the Governor fire you?

20 A Yes.

21 Q Just to be clear, you don't work in state government  
22 anymore, right?

23 A No.

24 Q All right. In your capacity as Secretary of  
25 Administration, did you have a hand in administering the

**LISA HICKS-THOMAS - DIRECT**

2674

1       health plan for the employees of the Commonwealth of  
2       Virginia?

3       A       Yes, I did. As I said, the workforce, state  
4       employees, about 105,000 employees, were under our state  
5       health plan, and that fell under the purview of the  
6       Department of Human Resource Management and then  
7       ultimately up to me as the Secretary.

8       Q       Who administers the health plan for Virginia state  
9       employees?

10      A       The company, you mean?

11      Q       I mean --

12      A       We are self-insured. The state is self-insured, but  
13     we have a third-party administrator and that is Anthem.

14      Q       Approximately how much money during your tenure did  
15     the State of Virginia spend on the healthcare plan for  
16     state employees? Ballpark?

17      A       Definitely in the millions of dollars.

18      Q       Now, did the state employee health plan authorize  
19     certain drugs that could be used and not used by state  
20     employees?

21      A       Yes.

22      Q       And who made the decision about what drugs would be  
23     covered and which ones would not?

24      A       Well, it was a joint decision. I mean, the  
25     Department of Human Resource Management and the folks that

**LISA HICKS-THOMAS - DIRECT**

2675

1       were directly assigned to look at the healthcare plan,  
2       they would do research over the year as well as with our,  
3       we had different advisors, different companies that worked  
4       with us, like Aon, for example, and they would make  
5       calculations as to what was more effective or what was,  
6       you know, not being utilized or what would be, you know,  
7       less expensive, for example, and so they would make  
8       recommendations to Sara. And then Sara would bring those  
9       to me and we would look over the plan and then we would  
10      sit down ultimately during the budget cycle when we were  
11      going over the state budget, we would sit down with the  
12      Governor and folks from the Department of Planning and  
13      Budget and make those decisions together.

14     Q     Did you periodically have meetings with the Governor  
15     about the state employee healthcare plan?

16     A     Yes.

17     Q     Did you have such a meeting back in the spring of  
18     2012?

19     A     Yes.

20     Q     Who was present at the spring meeting?

21     A     I was present, Sara Wilson was present, I believe  
22     Martin Kent was there, and the Governor was there.

23     Q     And where did the meeting take place?

24     A     I believe that meeting took place in the Governor's  
25     office.

**LISA HICKS-THOMAS - DIRECT**

2676

1 Q In general, what was the topic of that particular  
2 meeting?

3 A We were talking about the state employee health plan.

4 Q In very short terms, how would you describe a  
5 consumer-driven health plan?

6 A We were talking about implementing a consumer-driven  
7 health plan, which just to be brief, it is really  
8 empowering state employees or whoever is covered by the  
9 plan to have more information about their healthcare  
10 costs, and it is a way to drive down healthcare costs for  
11 the Commonwealth of Virginia and ultimately for the  
12 taxpayers.

13 Q During this particular meeting, did Mr. McDonnell  
14 make any reference to Anatabloc?

15 A Yes. At some point in the meeting, he reached in his  
16 pocket and pulled out, he showed us the pills and he said  
17 that he had been taking them and that they were working  
18 well for him, and that he thought it would be good for  
19 like state employees, and then he said that, he asked us  
20 if we would meet with them, meet with the people.

21 Q In that meeting, did you respond?

22 A I'm sure we said, "Sure." I can't remember. I  
23 really don't remember word for word what I said. But that  
24 was pretty much the gist of it.

25 Q And after the meeting finished, what did you do?

**LISA HICKS-THOMAS - CROSS - BROWNLEE**

2677

1 A After the meeting finished, Sara and I left the  
2 office, and I'm not sure if she told me at that point that  
3 she had already met with the folks, but we went down to my  
4 office and we went and looked it up on the computer to see  
5 what it was.

6 MS. ABER: If I could have one moment, please,  
7 Your Honor.

8 THE COURT: Sure.

9 (Counsel conferring with co-counsel.)

10 MS. ABER: Thank you, Your Honor. I have no  
11 further questions.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. BROWNLEE:

15 Q Good afternoon, Secretary Hicks-Thomas. My name is  
16 John Brownlee, and I'm an attorney for Bob McDonnell And I  
17 just have a few questions for you this afternoon. You  
18 worked for Governor McDonnell when he was Attorney  
19 General; is that correct?

20 A Yes.

21 Q What was your duties or title when you worked in the  
22 Attorney General's Office?

23 A When I worked for him or when I first started?

24 Q When you worked for Governor McDonnell.

25 A Okay, when Governor McDonnell became the Attorney

**LISA HICKS-THOMAS - CROSS - BROWNLEE**

2678

1 General, I was originally the Chief of the Computer Crime  
2 Unit for the Attorney General's Office. And then in 2006  
3 or 2007, he appointed me as his Deputy Attorney General  
4 for the Transportation, Real Estate, Environmental and  
5 Technology Division.

6 Q Okay. And so, then when I guess he left for a brief  
7 period to run for Governor and then when he was elected  
8 Governor, you joined his Cabinet; is that correct?

9 A Right. He appointed me as the Secretary in 2010, in  
10 January.

11 Q When he was inaugurated?

12 A Right.

13 Q You served in that position for four years?

14 A Yes.

15 Q You stayed until the end of his Administration?

16 A I did.

17 Q Just a couple of questions about this meeting. I  
18 think you said that Martin Kent was there?

19 A That's correct.

20 Q Ms. Wilson was there?

21 A Yes.

22 Q And yourself and Governor McDonnell.

23 A Right.

24 Q At some point -- and the purpose of the meeting was  
25 to talk about this consumer-supported or consumer-driven

**LISA HICKS-THOMAS - CROSS - BROWNLEE**

2679

1 kind of healthcare plan.

2 A That's right.

3 Q This is something that had been part of the  
4 Administration's drive since he started; is that correct?

5 A It is something we had been looking at doing right  
6 for the entire Administration.

7 Q I think you testified at some point during this, he  
8 pulled out an Anatabloc pill or something and said he took  
9 it and thought it helped him; is that correct?

10 A That's correct.

11 Q Okay. And then there was some other conversation,  
12 and I think you testified that you can't remember word for  
13 word, but at some point after the meeting, you and  
14 Ms. Wilson had a discussion about what he actually said,  
15 and whether or not he wanted you all to meet with him; is  
16 that right? Do you remember that?

17 A I don't recall that. I know at some point after the  
18 meeting, Sara and I left and she said that she had already  
19 met with the people, the Anatabloc folks. And then we  
20 walked down to my office and looked it up on the Internet.

21 Q Okay. You looked up the company?

22 A Right. We looked up Anatabloc.

23 Q Okay. Now, if it was after that -- was there any  
24 other follow-up?

25 A No.

**LISA HICKS-THOMAS - CROSS - BROWNLEE**

2680

1 Q Governor McDonnell never came back to you and said  
2 "Did you meet with them? Did you take care of that?"

3 A Never.

4 Q Okay. Now, Ms. Aber asked you about whether or not  
5 the Governor could fire you. I just want to be clear, he  
6 didn't fire you, right?

7 A No, he did not.

8 Q You stayed until the very last day; is that right?

9 A Until the very last day.

10 Q Okay. Fair to say that if you had the opportunity  
11 you would go work for him again?

12 MS. ABER: Objection.

13 THE COURT: She can answer it if she wants.

14 THE WITNESS: Well, yes. I guess if he was the  
15 Governor again, I guess I would work for him again. Yes.  
16 Although I like where I work now, I will say.

17 MR. BROWNLEE: Thank you very much.

18 THE COURT: Anything?

19 MR. KOFFMANN: No questions, Your Honor.

20 THE COURT: Anything else based on that?

21 MS. ABER: No, Your Honor, thank you.

22 THE COURT: You may stand down.

23 (Witness stood aside.)

24 Call your next witness, please.

25 MR. HARBACH: Thank you, Your Honor, the

**MICHAEL UNCAPHER - DIRECT**

2681

1 government calls Michael Uncapher.

2 MICHAEL UNCAPHER,

3 called as a witness by and on behalf of the government,

4 having been first duly sworn by the Clerk, was examined

5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HARBACH:

8 Q Good afternoon, sir.

9 A How are you?

10 Q All right, thanks. Could you please state your full  
11 name and spell your last name for the reporter?

12 A Michael David Uncapher, U-N-C-A-P-H-E-R.

13 Q What do you do for a living?

14 A I own a crossfit gym and do muscle therapy.

15 Q Tell us about your educational background.

16 A Graduated from Ohio State University with a degree in  
17 exercise science, and then have a certification in muscle  
18 activation techniques.

19 Q At one time in your life, were you married to Maureen  
20 C. McDonnell?

21 A Yes.

22 Q How was that person related to Mr. Robert McDonnell,  
23 if you know?

24 A Maureen is Bob's sister.

25 Q Are you still married to her?

**MICHAEL UNCAPHER - DIRECT**

2682

1 A No.

2 Q During what time frame were you married to your  
3 former wife?

4 A 2006, June, 2006 to the divorce was just final this  
5 year, 2014.

6 Q Okay. You said the divorce was finalized in 2014?

7 A Right.

8 Q Was there a time prior to the divorce during which  
9 you were separated from your ex-wife?

10 A Separated starting October of 2012.

11 Q Are you familiar with a business entity called MoBo  
12 Realty LLC?

13 A Yes.

14 Q What is that?

15 A It was a partnership between Bob and Maureen that  
16 managed the rental properties that they had.

17 Q And you are talking about Maureen, your ex-wife, his  
18 sister?

19 A Yes.

20 Q The rental properties that the company managed were  
21 located where?

22 A Sandbridge, in Virginia Beach.

23 Q How many properties were there that the company  
24 managed in Virginia Beach?

25 A Two.

**MICHAEL UNCAPHER - DIRECT**

2683

1 Q Do you recall whether those properties had names?

2 A Yes. East Coast Palace and Sunseeker.

3 Q Do you recall approximately when the first of those  
4 two homes was purchased by the partnership?

5 A Sunseeker was 2005, and East Coast Palace was 2006, I  
6 think.

7 Q Are those two houses physically close to one another  
8 in Virginia Beach?

9 A Across the street from each other.

10 Q You mentioned that the company was formed by  
11 Mr. McDonnell and his sister. Do you know what the  
12 division of ownership was between them in terms of  
13 proportion?

14 A 50/50.

15 Q I take it then that you yourself were not an owner?

16 A No.

17 Q Did you perform any services on behalf of MoBo?

18 A I did, kept track of bookkeeping, kept track of the  
19 statements that the realty company or the management  
20 company for the two properties sent, and paid bills.

21 Q During what time period did you perform those  
22 services?

23 A 2005 until our separation in 2012.

24 Q Which you said was in October of 2012; is that right?

25 A Yes.

**MICHAEL UNCAPHER - DIRECT**

2684

1 Q Is 2005 when this business entity was first created?

2 A Yes.

3 Q So you started performing these services from the  
4 get-go until your separation from your ex-wife?

5 A Right.

6 Q Were you paid for the duties that you performed?

7 A At the beginning, I was. I don't know exactly when I  
8 stopped being paid, but --

9 Q Are you a CPA, sir?

10 A No.

11 Q Did you do any formal accounting work for MoBo?

12 A No.

13 Q Did you prepare the taxes for MoBo?

14 A No.

15 Q Did you work with any accounting or tax professionals  
16 to accomplish those tasks?

17 A Yes.

18 Q Who do you recall working with?

19 A Dan Cook and Brenda Chamberlain.

20 Q Who is Mr. Cook?

21 A He is the accountant that we used.

22 Q What about Ms. Chamberlain?

23 A She was the bookkeeper.

24 Q How frequently would you interact with them to help  
25 them do their jobs?

**MICHAEL UNCAPHER - DIRECT**

2685

1 A Dan Cook, at tax time, to give him all the  
2 information, make sure he had all the information or  
3 answer any questions that he had. And then Brenda, a few  
4 times throughout the year I would send her just the bills  
5 and numbers or statements that we got from Sandbridge  
6 Realty.

7 Q For her work as the bookkeeper?

8 A Right.

9 Q From time to time, would Ms. Chamberlain or Mr. Cook  
10 provide you with copies of work product they did, whether  
11 it was tax returns in the case of Mr. Cook, or copies of  
12 QuickBooks and the like in the case of Ms. Chamberlain?

13 A She usually sent them directly to Dan Cook, and then  
14 he would give us the tax return at the end of the year.

15 Q Who is "us"?

16 A Maureen and I.

17 Q Just so we are clear in the record, your wife at the  
18 time?

19 A Right.

20 Q Let's go back to 2005 or thereabouts when Sunseeker,  
21 the first of the two, was purchased. In retrospect, where  
22 was the market then, if you recall generally?

23 A At the height.

24 Q And have real estate values fallen since Sunseeker  
25 and later East Coast Palace was purchased?

**MICHAEL UNCAPHER - DIRECT**

2686

1 A Yes.

2 Q In fact, did the real estate values begin to fall  
3 shortly after those homes were purchased?

4 A Yes.

5 Q What is your recollection of how the properties did  
6 in terms of rental income versus expenses year to year?  
7 On that metric, did they make money, to your recollection,  
8 or did they lose money?

9 A Lost money.

10 Q And again, on an annual basis in terms of cash flow,  
11 say during the last five years you were working there,  
12 2008 to, I guess, 2012, do you have any recollection of  
13 the approximate amount of money that the properties lost  
14 in terms of cash flow each year?

15 A Between the two of them?

16 Q Yes, sir.

17 A 50 to \$60,000.

18 Q Now, to be fair, was your understanding that a  
19 business purpose for MoBo was to make a bunch of money on  
20 these homes?

21 A It was always to -- for long term investment. It was  
22 for long term investment and enjoyment. We knew out of  
23 the gate that they weren't going to make money.

24 Q Okay. And in fact, they didn't.

25 A Right.

**MICHAEL UNCAPHER - DIRECT**

2687

1 Q Now, did there come a time, let's say approximately  
2 2009, when there were some discussions about trying to  
3 sell the homes?

4 A Yes.

5 Q Could we put the first exhibit for identification up  
6 on the screen, which is Government's 48. Mr. Uncapher,  
7 take a look at that screen there, and we will blow up the  
8 top and scroll down to the bottom form, please, so he can  
9 identify the document. Can you see this okay, sir?

10 A Yes.

11 Q Go back to the top, please. My question for you,  
12 sir, is whether this is an e-mail exchange in the 2009  
13 time frame concerning putting the homes on the market.

14 A Yes.

15 MR. HARBACH: The government offers Government's  
16 48.

17 THE COURT: It will be admitted.

18 BY MR. HARBACH:

19 Q Let's start at the bottom, please, with at least the  
20 beginning of the e-mail from someone named Tom Bucker.  
21 Who is that?

22 A Real estate agent at Sandbridge Realty.

23 Q The e-mail that Mr. Bucker has addressed his e-mail  
24 to, mcdonnell71@cox.net, do you know whose  
25 retail -- e-mail address that was?

**MICHAEL UNCAPHER - DIRECT**

2688

1 A My wife, Maureen.

2 Q Your wife, Maureen.

3 A Yes.

4 Q Let's scroll up, please, to the next e-mail. It  
5 says, the signature block on this one is from Maureen  
6 McDonnell Uncapher. That's your then wife, right?

7 A Right.

8 Q And do you recall what her reference to the Seibert  
9 folks means?

10 A Seibert was just the competing real estate company.

11 Q Okay. Then if we could scroll up to the top, the  
12 e-mail from Mr. McDonnell, and what's the date of the  
13 e-mail that Mr. McDonnell sends to his sister?

14 A April 24th, 2009.

15 Q If we could take that one down. The next one is  
16 Government's 49 for identification. Same drill. If you  
17 could blow it up for him a little bit. Take a look at  
18 that, sir, then I'll scroll down for you. Go ahead,  
19 Mr. Starnes. Thank you.

20 MR. HARBACH And with the Court's indulgence, we  
21 will show him Page 2 just so he can identify it, please.

22 BY MR. HARBACH:

23 Q Mr. Uncapher, do you recognize this as an e-mail  
24 exchange in August of 2009, again, about the attempts to  
25 sell the homes?

**MICHAEL UNCAPHER - DIRECT**

2689

1 A Yes.

2 MR. HARBACH: The government offers Government  
3 Exhibit 49.

4 THE COURT: It will be admitted.

5 BY MR. HARBACH:

6 Q I'd like to start at Page 2, the very first e-mail on  
7 the chain, at the bottom. Could you just blow that one up  
8 for us. This is an e-mail from your then wife to  
9 Mr. McDonnell and you; is that right?

10 A Yes.

11 Q Okay. And she is talking about dropping the price on  
12 Sunseeker to 1.399k from a higher price. Is it your  
13 recollection that the Sunseeker property was actually on  
14 the market at this time in August of 2009?

15 A I believe so.

16 Q All right. Then a little bit later in the paragraph  
17 there is a sentence that begins "For ECP." Is that East  
18 Coast Palace, the other house?

19 A Yes.

20 Q And in this one, your then wife is reporting that she  
21 recommended listing at 900,000. Does that mean that folks  
22 were contemplating putting ECP on the market at that time  
23 or do you remember whether it was in fact already on the  
24 market?

25 A I don't remember.

**MICHAEL UNCAPHER - DIRECT**

2690

1 Q Then finally, in that e-mail, she says, "We will  
2 either need to take a hit on the sales price or come up  
3 with 60k in a few months to make it through another off  
4 season."

5           What was significant about the off season to your  
6 recollection?

7 A Less rental.

8 Q Say again?

9 A Less rental income.

10 Q Did that make it more difficult to get through?

11 A Yes.

12 Q Financially speaking?

13 A Well, it was definitely not even throughout the year  
14 as far as income.

15 Q Then if we could just go back to Page 1 just to see  
16 how this turns out. The second e-mail from the top is the  
17 one I care about, please, Mr. Starnes. Now, the second  
18 one on the screen from your then wife, Mr. McDonnell's  
19 sister, she mentions somebody called Gail, and says she is  
20 going to go ahead and lower the price. Was Gail a real  
21 estate agent, I take it?

22 A Yes.

23 Q That's it for 49. Next document is Government's 51  
24 for identification. Again, scroll down so he can see the  
25 whole thing to identify it, please. Mr. Uncapher, do you

**MICHAEL UNCAPHER - DIRECT**

2691

1 recognize this to be an e-mail exchange involving, among  
2 other people, you, your then wife, and Mr. McDonnell  
3 involving sale of the house?

4 A Yes.

5 MR. HARBACH: The government offers Government's  
6 51.

7 THE COURT: It will be admitted.

8 BY MR. HARBACH:

9 Q On this one, the first e-mail chronologically is from  
10 you, and what's the date on there?

11 A December 4th, 2009.

12 Q It is sent to Mr. and Ms. McDonnell and in addition,  
13 your then wife; is that right?

14 A Yes.

15 Q You say, "Any luck finding a magical partner?" What  
16 does that mean?

17 A We were looking for, or had talked about finding  
18 somebody that was interested in either buying or becoming  
19 an investor in the properties.

20 Q When you say "we," we are talking about that, who do  
21 you mean, sir?

22 A Bob, Maureen, Maureen, and myself.

23 Q Bob, meaning Mr. McDonnell?

24 A Right.

25 Q Both Maureens?

**MICHAEL UNCAPHER - DIRECT**

2692

1 A Yes.

2 Q And you.

3 A And myself.

4 Q The next e-mail, that's from the Governor's sister,  
5 right, your then wife?

6 A Right.

7 Q And could you read just the first couple of sentences  
8 that she writes there, please, beginning with "In other  
9 words...?"

10 A "In other words, we are in trouble and need to act  
11 now. We can look into a short sale, but we need to come  
12 up with a buyer first. I understand short sales will not  
13 hurt our credit, unlike bankruptcy."

14 Q That's enough, sir. Thank you. First question is,  
15 what is your recollection of why you were in trouble?

16 A Just there was a shortfall every year. That's what I  
17 believe she is talking about.

18 Q Financially speaking?

19 A Just the shortfall for income versus revenue of the  
20 properties.

21 Q Okay. She then states, "We can look into a short  
22 sale but we need to come up with a buyer first." Do you  
23 know what a short sale is?

24 A Vaguely.

25 Q Tell us your best understanding then.

**MICHAEL UNCAPHER - DIRECT**

2693

1 A That the property is sold for less than it's worth,  
2 or less than is owed on it.

3 Q Okay. Then the next sentence is: "I understand  
4 short sales will not hurt our credit, unlike bankruptcy."  
5 Do you have a recollection of bankruptcy being discussed  
6 among this group of people at the time as a possibility?

7 A No.

8 Q The very end of her e-mail, she states: "From what  
9 Mike indicated last month, we need money now to make  
10 December payments." What did you understand that to mean?  
11 What are the December payments that needed to be made?

12 A Mortgage, mortgages of the properties.

13 Q Then if we could scroll up to the top, Mr. McDonnell  
14 responds and says, "We are working on a couple of ideas."  
15 Please, could you just note for us the date of his e-mail?

16 A December 4th, 2009.

17 Q Was that after he had won the election to become  
18 Governor?

19 A Yes.

20 Q But before he was inaugurated?

21 A Right.

22 Q That's it for 51. Did the houses sell in 2009?

23 A No.

24 Q You have testified a couple times in reference to  
25 these e-mails about a cash shortfall that you all

**MICHAEL UNCAPHER - DIRECT**

2694

1       encountered from year to year, I think you said; is that  
2 right?

3       A      Yes.

4       Q      Generally speaking, how did the -- how did the  
5 business deal with that cash shortfall each year? In  
6 other words, what sorts of arrangements would be made to  
7 overcome those issues?

8       A      Maureen and Bob put money into the -- personal money  
9 into the account. We had a line of credit that we used  
10 for expenses. And then we got a couple of loans from  
11 other people.

12      Q      All right. So when you say, "Bob and Maureen could  
13 invest further themselves in the business," you are  
14 talking about the business owners, Mr. McDonnell and his  
15 sister.

16      A      Yes.

17      Q      Now, the loans that you mentioned a moment ago, do  
18 you recall someone named Dr. Davis?

19      A      Yes.

20      Q      Was he among the people that a loan was obtained from  
21 to deal with these cash shortfalls?

22      A      Yes.

23      Q      Who is Dr. Davis?

24      A      He was a friend of Bob and Maureen's.

25      Q      Do you recall what sort of doctor he was?

**MICHAEL UNCAPHER - DIRECT**

2695

1 A Radiologist.

2 Q Did you ever meet him?

3 A I did.

4 Q Tell us about that.

5 A I first met him at a Christmas party.

6 Q Do you recall when that was?

7 A It was Scott Rigell's Christmas party, I think, in  
8 December of 2010.

9 Q And how did you learn that Dr. Davis was going to  
10 provide a loan? If you recall?

11 A I don't remember.

12 Q Okay. Did you ever have any conversation with  
13 Mr. McDonnell about that possibility, to your  
14 recollection?

15 A I don't remember a specific conversation. But, I  
16 mean, I was told either by him or Maureen --

17 Q Which Maureen, sir?

18 A My wife at the time.

19 Q That?

20 A That we were going to go to Dr. Davis' house to talk  
21 to him.

22 Q And did you in fact do that?

23 A Yes.

24 Q Do you recall when it was that you went to meet with  
25 Dr. Davis?

**MICHAEL UNCAPTER - DIRECT**

2696

1 A I don't know the exact month.

2 Q Okay. We will get to a document that can help you  
3 with the date in a moment. Let me ask you this before we  
4 get there. Who went over there besides yourself?

5 A My wife, Maureen.

6 Q The two of you?

7 A Yes.

8 Q What happened when you got there?

9 A We talked with him and had lunch, and it was more  
10 social for most of it, and most of the time. I think we  
11 were there for about an hour.

12 Q What else happened besides lunch?

13 A And then talked about the loan, him giving us money  
14 for a loan.

15 Q Did he in fact do that at that meeting?

16 A Part of it, I think.

17 Q Now, how long would you say it was after you met Dr.  
18 Davis at the Christmas party that you went to his house?

19 A A few months.

20 Q Could we take a look for identification at  
21 Government's 55, please? Take a look at that,  
22 Mr. Uncapher. Do you recognize these documents?

23 A Yes.

24 Q Is this a check and deposit slip related to monies  
25 that Dr. Davis provided at that meeting at his place?

**MICHAEL UNCAPHER - DIRECT**

2697

1 A It looks like it.

2 MR. HARBACH: The government offers Government's  
3 55.

4 THE COURT: It will be admitted.

5 BY MR. HARBACH:

6 Q Let's start at the bottom with the check, please.

7 Could we blow that up? What's the date on this check,  
8 sir?

9 A December 19th.

10 Q What year?

11 A 2009.

12 Q You said a moment ago that you thought the Christmas  
13 party may have been in 2010. Does this change your view  
14 of that?

15 A Yes.

16 Q What year do you think the Christmas party was?

17 A 2009.

18 Q Okay. And did Dr. Davis provide this check to you  
19 and your sister at his home that day?

20 A I believe so.

21 Q All right. Now, let's scroll up to the top, please,  
22 and see the very first document. This appears to be a  
23 deposit slip to a bank called TowneBank, and the name up  
24 there, it says MoBo Real Estate Partners. Is that your  
25 handwriting, by chance?

**MICHAEL UNCAPHER - DIRECT**

2698

1 A Yes.

2 Q And then on the right-hand side of the slip, it  
3 indicates \$100 is in the cash block, and \$9,900 for a  
4 check. Is this the deposit slip for monies you received  
5 from Dr. Davis, sir?

6 A Yes.

7 Q Now, did he give you a check for \$9,900 and \$100  
8 cash?

9 A I don't remember.

10 Q Do you remember where the \$100 cash came from?

11 A No.

12 Q In any event, all \$10,000 was deposited to MoBo's  
13 account on the same day; is that right?

14 A Right.

15 Q And just so we can show the jury, the last part of  
16 this document, scroll down a little bit, that's the teller  
17 receipt for \$100 cash, right?

18 A Right.

19 Q Let's take down Government's 55, please. A moment  
20 ago you said that at the meeting at his house, Dr. Davis  
21 advanced part of the monies that he ultimately loaned  
22 MoBo. Did there come a time after that where he provided  
23 additional funds, additional loan proceeds?

24 A Yes.

25 Q Let's take a look at Government's 59, please. Blow

**MICHAEL UNCAPHER - DIRECT**

2699

1 this up for the witness. Do you recognize this to be a  
2 later check that Dr. Davis provided for MoBo?

3 A Yes.

4 Q And the associated deposit slip.

5 A Yes.

6 MR. HARBACH: Your Honor, the government offers  
7 Government's 59.

8 THE COURT: It will be admitted.

9 BY MR. HARBACH:

10 Q Now, the check at the bottom of the screen here, this  
11 one is dated February 6th of 2010. And it looks as if it  
12 was deposited on the 8th. Do you recall the circumstances  
13 of how you all received this check?

14 A I don't remember.

15 Q You don't remember? So now we are up to in the  
16 neighborhood of \$30,000, correct?

17 A Right.

18 Q Was this the end of the line or were there additional  
19 funds after this to your recollection?

20 A There was a total of 50.

21 Q A total of \$50,000?

22 A Right.

23 Q Now, let's take a look then, actually, you can take  
24 59 down. Let's take a look at Government's 61, please.  
25 Do you recognize this document, sir, to be an additional

**MICHAEL UNCAPHER - DIRECT**

2700

1 check that Mr. Davis -- Dr. Davis provided to MoBo?

2 A Yes.

3 Q And the associated deposit slip?

4 A Yes.

5 MR. HARBACH: The government offers Government's  
6 61.

7 THE COURT: It will be admitted.

8 MR. HARBACH: Can I have just a second, please?

9 THE COURT: Yes.

10 (Counsel conferring with co-counsel.)

11 BY MR. HARBACH:

12 Q Now, the date on this check, sir, is March 15th of  
13 2010. It appears that it was deposited five days later on  
14 the 15th. Do you have a recollection of how you all  
15 obtained this check from Dr. Davis?

16 A I believe we went to -- I went to his house, but I  
17 don't exactly recall.

18 Q And the handwriting on this deposit slip at the top,  
19 is that you again?

20 A Yes.

21 Q Before we go on, because I forgot to ask you this,  
22 could we take a look at Government's 59, which is in  
23 evidence, just for a second? Blow up that top deposit  
24 slip for the witness, please. Thank you, Mr. Starnes. Do  
25 you recognize the handwriting on this deposit slip, sir?

**MICHAEL UNCAPHER - DIRECT**

2701

1 A No.

2 Q You can take that down. So to this point, we have  
3 two checks for \$20,000, correct?

4 A Yes.

5 Q And then one check for \$9,900, correct?

6 A Yes.

7 Q So that's a total of \$49,900; am I right about that?

8 A Yes.

9 Q You said a moment ago that the total amount that was  
10 loaned by Dr. Davis was \$50,000. Do you recall that?

11 A Yes.

12 Q Does that help you remember whether that additional  
13 hundred dollars in cash was part of the Dr. Davis loan?

14 A I assume it is.

15 Q Okay. Let's take a look -- actually, before we look  
16 at the next exhibit, I think you said that the March 15th  
17 of 2010 check that we just looked at, that was  
18 Government's 61, did you say that you think you got that  
19 at Dr. Davis' house again?

20 A I think so.

21 Q Who was there that day, if you remember?

22 A I don't remember.

23 Q Do you remember anything else that happened that day  
24 besides picking up the check?

25 A No.

**MICHAEL UNCAPHER - DIRECT**

2702

1 Q At any time, was there a promissory note signed as to  
2 any portion of these loan proceeds?

3 A We did sign a promissory note.

4 Q Let's take a look at Government's 60, please. Is  
5 this the promissory note you just mentioned?

6 A Yes.

7 MR. HARBACH: The government offers Government's  
8 60.

9 THE COURT: It will be admitted.

10 BY MR. HARBACH:

11 Q What's the date on this promissory note, sir?

12 A March 15th, 2010.

13 Q That's the same day that was on the check that was on  
14 Government's 61 we looked at a minute ago, right?

15 A Right.

16 Q Do you recall whether this promissory note, was that  
17 also signed at Dr. Davis' home or done later in the day or  
18 what's your memory of that?

19 A It was signed by Maureen and I on that day.

20 Q Okay. Do you know when your brother-in-law, your  
21 ex-brother-in-law, Mr. McDonnell, signed it?

22 A No.

23 Q That is your signature that appears at the bottom?

24 A Yes.

25 Q Do you recall yourself, do you recall having any

**MICHAEL UNCAPHER - DIRECT**

2703

1 discussions with Dr. Davis about the promissory note or  
2 the necessity for it?

3 A No.

4 Q What was, according to the promissory note, if we  
5 could blow up the text of the note, please, without the  
6 signature blocks. Thank you, Mr. Starnes. The principal  
7 sum is how much money?

8 A \$50,000.

9 Q What's the interest rate on this loan?

10 A Seven percent.

11 Q The repayment term? How many years?

12 A Five years.

13 Q Thank you, sir. It indicates a monthly payment of  
14 how much, sir?

15 A \$1,001.90.

16 Q Say that again.

17 A \$1,001.90.

18 Q Thank you, sir. Could we take a look for  
19 identification now at Government's 622. Do you recognize  
20 this, sir?

21 A Yes.

22 Q This is an amortization schedule for the Dr. Davis  
23 loan.

24 A Right.

25 Q Did you prepare this thing?

**MICHAEL UNCAPHER - DIRECT**

2704

1 A Yes.

2 MR. HARBACH: The government offers Government's  
3 622.

4 THE COURT: It will be admitted.

5 BY MR. HARBACH:

6 Q Blow up the top of the form so we can explain this to  
7 the jury. What's this document, sir? What's its purpose?

8 A To see how each payment is broken down and what the  
9 balance is at the end of each month.

10 Q Okay. And so the interest and principal together  
11 should be that \$1,001.90 that was reflected in the  
12 promissory note?

13 A Right.

14 Q Thank you. You can take down 622. That's it for the  
15 Dr. Davis loan.

16 Do you recall whether there was another person who  
17 provided -- withdrawn. Do you recall whether  
18 Mr. McDonnell's father ever provided a loan to the  
19 business?

20 A Yes.

21 Q What do you know about that?

22 A I don't even remember how much it was, but Maureen  
23 and Bob talked with their sister because she was in charge  
24 of their dad's money.

25 Q When you say Maureen and Bob, you mean --

**MICHAEL UNCAPHER - DIRECT**

2705

1 A My wife.

2 Q Your wife, and then yet another sister that they  
3 talked to?

4 A Right.

5 Q Do you recall her name?

6 A Eileen.

7 Q Okay. And I heard you say you don't remember much  
8 about it. Do you remember even approximately how much it  
9 was, sir?

10 A No.

11 Q Were you interviewed by the FBI approximately a year  
12 ago about this?

13 A Yes.

14 Q And did you answer their questions?

15 A Yes.

16 MR. SMALL: I have a running objection to the  
17 prior loans from the father just as to relevance. I will  
18 stipulate that they were loans.

19 THE COURT: Overruled.

20 MR. HARBACH: Can I tender the report to the  
21 witness, Judge?

22 THE COURT: Go ahead.

23 (Document proffered to witness.)

24 BY MR. HARBACH:

25 Q Mr. Uncapher --

**MICHAEL UNCAPHER - DIRECT**

2706

1                   MR. HARBACH: Just for the record, I've tendered  
2 to the witness a copy of the Report of Interview from his  
3 meeting with the FBI that he just talked about.

4 BY MR. HARBACH:

5 Q       If I could direct your attention, sir, to Page 3, the  
6 second paragraph. It begins with the word "Regarding."  
7 Do you see that there?

8 A       Yes.

9 Q       Just read that paragraph to yourself, let me know  
10 when you are done, and then I'll ask you a question.

11                   (Witness perusing document.)

12 A       Okay.

13 Q       My question to you is whether that refreshes your  
14 recollection at all about the approximate amount of the  
15 loan that was obtained from Mr. McDonnell's father.

16 A       Yes.

17 Q       And what was that approximately, to your  
18 recollection?

19 A       Over a hundred thousand dollars.

20 Q       Thank you, sir. You can put that down. Now, the Dr.  
21 Davis promissory note that we saw a little while ago was  
22 signed in March of 2010. I'm going to ask you to fast  
23 forward with me to early 2011. Okay, so nearly a year  
24 later. Do you recall an effort to refinance various bank  
25 loans for the rental properties in early 2011?

**MICHAEL UNCAPHER - DIRECT**

2707

1 A I remember trying to refinance. I don't exactly  
2 remember dates.

3 Q Okay. Let's take a look for identification at  
4 Government's 84, please. Just blow the content up for the  
5 witness. Take a look at this for a minute and then I'll  
6 ask a question. Can you see that okay?

7 A Yes.

8 Q Do you recognize this to be an e-mail exchange about  
9 refinancing the loans on the rental properties?

10 A Yes.

11 MR. HARBACH: The government offers Government's  
12 84.

13 THE COURT: It will be admitted.

14 BY MR. HARBACH:

15 Q Let's start with the e-mail at the bottom.  
16 Mr. Starnes, if you could go out and zoom back in a little  
17 bit because that's small text. It would be useful. Thank  
18 you. This first e-mail is dated January 5th of 2011. It  
19 is from Mr. McDonnell. And it begins with "Ted and I had  
20 a good meeting." Do you recall who Ted is, sir?

21 A Ted Yoder.

22 Q Who is that?

23 A He was with Monarch Mortgage.

24 Q He worked for a mortgage company?

25 A Right.

**MICHAEL UNCAPHER - DIRECT**

2708

1 Q Next sentence says: "He has a plan to refinance all  
2 five loans as interest only at five percent," and so on.

3 When Mr. McDonnell says "all five loans," do you have  
4 a recollection about what that refers to?

5 A I believe three loans for Sunseeker, one loan for  
6 ECP, and one loan for a house in Wintergreen.

7 Q Okay. Which we will talk about in just a second. A  
8 little bit further down in that paragraph, there is a  
9 sentence that says: "This gets us halfway to savings we  
10 need." My question for you is, do you have a recollection  
11 of what you understood Mr. McDonnell to mean by that, what  
12 the savings was that you all needed?

13 A I would be guessing at what his --

14 Q I don't want you to guess. My question is, do you  
15 remember whether you had any conversations with him on  
16 that issue around that time or have any recollection of  
17 what you understood him to be talking about?

18 A Just getting a better rate for the loans.

19 Q Okay. Let's scroll up a little bit. This is your  
20 response to Mr. McDonnell's e-mail on January 5th, same  
21 day. And you say here: "We need to talk about BRH."  
22 What's that?

23 A Blue Ridge Heaven.

24 Q Could you explain to the jury what Blue Ridge Heaven  
25 is, please?

**MICHAEL UNCAPHER - DIRECT**

2709

1 A That's a house in Wintergreen.

2 Q This is the same home you mentioned a moment ago?

3 A Right.

4 Q Do you recall who owned that vacation home?

5 A Bob and his wife and Maureen, my wife, and their  
6 sister, Eileen, bought in later.

7 Q So in addition to Mr. McDonnell and his wife,  
8 Mr. McDonnell's sister, Maureen, and you, were you an  
9 owner as well or no?

10 A I was on the deed but not on the mortgage.

11 Q Okay. Then a new party, an additional sister of  
12 Ms. McDonnell, Eileen and her husband; have I got that  
13 right?

14 A Right.

15 Q Okay. So last question at the top of this e-mail,  
16 there is a reference to Wintergreen. That's the same  
17 house as BRH, right?

18 A Right.

19 Q So the partnership that you described just now with  
20 respect to Wintergreen, was that just a single property?

21 A Yes.

22 Q Were you involved yourself at all in handling the  
23 finances for Blue Ridge Heaven?

24 A In the same capacity as I did for the beach  
25 properties.

**MICHAEL UNCAPHER - DIRECT**

2710

1 Q For MoBo.

2 A Right.

3 Q Okay. You can take that down. Next document I'd  
4 like to show you is Government Exhibit 90 for  
5 identification, please. Scroll down for him so he can see  
6 the rest. Thank you, Mr. Starnes. Do you recognize this  
7 to be an e-mail exchange among you, your then wife, and  
8 Mr. McDonnell about loan payments related to MoBo?

9 A Yes.

10 MR. HARBACH: The government offers Government's  
11 90.

12 THE COURT: It will be admitted.

13 BY MR. HARBACH:

14 Q And we can start at the bottom. This e-mail bleeds  
15 on to the next page, but let's start here. What date did  
16 you send this e-mail, sir?

17 A March 9th, 2011.

18 Q You say, "Here is the breakdown for what is owed for  
19 February and March." What's NFCU?

20 A Navy Federal Credit Union.

21 Q TB 1?

22 A TowneBank.

23 Q TB 2?

24 A TowneBank as well.

25 Q And then Bank at Lantec. Is that just another loan?

**MICHAEL UNCAPHER - DIRECT**

2711

1 A Right.

2 Q At least on this page, that's four different loans?

3 A Right.

4 Q Okay. And then let's look at the next page. You  
5 tally up those payments for February and March there. And  
6 then it says Bob and Mo. Who is the Mo there?

7 A My wife.

8 Q That's split in half because they were 50/50  
9 partners?

10 A Right.

11 Q Now, you say, "Regular payments for mortgages only  
12 are," and then the four different mortgages listed there.  
13 Have I got that right?

14 A Yes.

15 Q So that total that's listed there, \$11,557.23 on the  
16 second page of Government's 90, what does that represent?

17 A The total for the mortgages of the two beach  
18 properties.

19 Q That's a monthly payment?

20 A Right.

21 Q And that's what you say in the next sentence. Now,  
22 you also say, "I sent an e-mail to TB..." is that  
23 TowneBank?

24 A Yes.

25 Q "...this morning letting them know I would be getting

**MICHAEL UNCAPHER - DIRECT**

2712

1 both loans up-to-date by this Friday." Were you a little  
2 behind on those payments at this stage?

3 A Yes.

4 Q Now, finally, if we could go back to Page 1 of  
5 Government's 90, down here, same e-mail, your opening  
6 sentence, you say, "Here is the breakdown for what is owed  
7 for February and March." Why were you doing this? Why  
8 did you prepare and send this e-mail to Mr. McDonnell and  
9 your wife?

10 A So that they could put money into the bank to pay the  
11 mortgages.

12 Q Take down Government's 90. Next document is  
13 Government's 91, please. We are still in March of 2011,  
14 but take a look at this one for identification, please.  
15 Do you recognize this to be an e-mail exchange that you  
16 and others were on concerning the attempt to refinance the  
17 loans on the homes?

18 A Yes.

19 Q Or some of the loans.

20 MR. HARBACH: The government offers Government's  
21 91.

22 THE COURT: It will be admitted.

23 BY MR. HARBACH:

24 Q Let's start at the bottom, please. We will just  
25 scroll up. You can see what Mr. McDonnell says, it is an

**MICHAEL UNCAPHER - DIRECT**

2713

1 e-mail to Mr. Yoder on March 21st, Mr. Yoder's response.

2 And the date of this e-mail is March 24th of 2011. My

3 question for you, sir, is Mr. Yoder refers in his second

4 sentence there, "I recommend that you let Bruce and I work

5 on a private solution for you." What did you understand

6 that to mean?

7 A I didn't know.

8 Q Do you recall having any discussions with

9 Mr. McDonnell about a private solution or a private

10 proposal, as he refers to it in the next e-mail?

11 A He directed me to talk to or call Bruce Thompson.

12 Q Who is that?

13 A A developer in Virginia Beach.

14 Q For what purpose?

15 A Just to get his advice.

16 Q On?

17 A On I didn't know what at the time.

18 Q Did you have a conversation with Bruce?

19 A I did.

20 Q Did it concern an alternative financing proposal?

21 A It wasn't about financing, it was more marketing.

22 Q Okay. Were you involved in any way with discussions

23 with Mr. Yoder about the refinance issue?

24 A No.

25 Q Okay. If we could look at the e-mail at the top of

**MICHAEL UNCAPHER - DIRECT**

2714

1 the screen right now, which is the one from Mr. McDonnell.  
2 A little bit later on, he refers to someone named Will,  
3 says, "Will is helping with 2.75 percent on both loans for  
4 a year." Do you recall who Will is?

5 A Will Sessoms, President of TowneBank.

6 Q Okay. And then finally, the e-mail at the top, this  
7 is from your ex-wife, correct?

8 A Yes.

9 Q Could you read to us what she says there?

10 A "What an unfortunate waste of time. Thanks for all  
11 you are doing, Bob. Mike--can you get on the phone with  
12 John Bishard tomorrow. I can participate a few times  
13 during the day if desired."

14 Q Who is John Bishard?

15 A He is a developer in Virginia Beach.

16 Q Is that you, are you the Mike she is directing to get  
17 in touch with him?

18 A Yes.

19 Q What was that all about?

20 A I don't know. I never talked to him.

21 Q Finally there is an e-mail at the top that says  
22 mmem1@mac.com. Is that your e-mail address, sir?

23 A Yes.

24 Q That's it for 91. Did you ever meet Mr. Jonnie  
25 Williams?

**MICHAEL UNCAPHER - DIRECT**

2715

1 A No.

2 Q Did you ever speak to him?

3 A Yes.

4 Q Tell us what you recall about that, the first time  
5 you spoke to Mr. Williams.

6 A I talked first with Maureen, Bob's wife, and I don't  
7 recall if she called me or I called her, and there was  
8 phone calls back and forth to try to get in touch, so I  
9 talked to her first and Jonnie was with her at the time.

10 Q Okay.

11 A And she passed the phone to him to talk to me.

12 Q And do you recall what your conversation with  
13 Ms. McDonnell was during that call?

14 A She said that Jonnie was there to talk about either  
15 buying or investing in the properties, the beach  
16 properties.

17 Q Did you tell us what you recall about your  
18 conversation with Mr. Williams after she put him on the  
19 phone.

20 A I told him what we owed on each property and what the  
21 approximate revenue and expenses or shortfall was for the  
22 property.

23 Q Okay. Do you recall approximately when this  
24 telephone call took place, sir?

25 A I don't. I don't remember.

**MICHAEL UNCAPHER - DIRECT**

2716

1 Q Take a look at that document that's in front of you.

2 I'm going to direct your attention to Page 3, please.

3 There is a paragraph in the middle of the page that

4 begins, "Regarding the loans..." Do you see that, sir?

5 A Yes.

6 Q Just take a minute, read that paragraph to yourself  
7 and let me know when you are done.

8 (Witness perusing document.)

9 A Okay.

10 Q Does that refresh your recollection about when this  
11 first time you talked to Mr. Williams was, approximately?

12 A In 2011.

13 Q Approximately when in 2011, sir?

14 A Summer.

15 Q Thank you. Now you can put that down. Focusing on  
16 this conversation that happened sometime in the summer of  
17 2011, do you recall whether Mr. Williams asked you any  
18 questions during that call?

19 A Just about the information that I gave him.

20 Q And did a similar incident to the one you have just  
21 described occur again several months later?

22 A Yes.

23 Q Tell us what you remember about that.

24 A It was basically the exact same conversation. I had  
25 talked to Maureen first, and she passed the phone to

**MICHAEL UNCAPHER - DIRECT**

2717

1 Jonnie Williams, and I explained the financial situation  
2 of the two properties.

3 Q And do you recall anything about your conversation  
4 with Ms. McDonnell before she passed the phone to  
5 Mr. Williams?

6 A Same thing. She said that he was basically following  
7 up from the previous conversation, and just wanted an  
8 updated version.

9 Q And based on your conversations on the two occasions  
10 with Ms. McDonnell, what did you understand from her to be  
11 Mr. Williams' interest?

12 A Either buying or investing.

13 Q Okay. Now, same question as before: Do you recall  
14 approximately when this second phone conversation was?

15 A Early, 2012.

16 Q And do you recall, other than asking the questions  
17 that prompted you to provide the same information as  
18 before, do you recall any other comments or questions by  
19 Mr. Williams during that call, sir?

20 A No.

21 Q How long would you say you talked to him on each of  
22 these occasions?

23 A 10 or 15 minutes.

24 Q Between the two or each?

25 A Between the two. I'm sorry, each phone call, is that

**MICHAEL UNCAPHER - DIRECT**

2718

1 what you are asking?

2 Q Yes, sir.

3 A The same for each phone call.

4 Q Let's take a look for identification at Government's  
5 295, please. Just scroll down for him so he can see the  
6 e-mail at the bottom. Sir, do you recognize this to be an  
7 e-mail that you sent to Mr. and Ms. McDonnell and some  
8 additional e-mail traffic between them?

9 A Yes.

10 MR. HARBACH: The government offers Government's  
11 295.

12 THE COURT: It will be admitted.

13 BY MR. HARBACH:

14 Q Let's start at the bottom, please, which is what's on  
15 the screen right now. Your first paragraph there, you  
16 say, "I just wanted to follow up from our meeting." Do  
17 you recall what that meeting was about?

18 A Not specifically. No, I don't.

19 Q Okay. The date of this e-mail that you are sending  
20 is January 25th of 2012; is that right?

21 A Right.

22 Q The next paragraph says: "Could you please send a  
23 check for \$1,000 for your portion of past pay-in for BRH?"  
24 That's the property in Wintergreen?

25 A Right.

**MICHAEL UNCAPHER - DIRECT**

2719

1 Q It says Mo and Boo have both put money in and so  
2 forth. Is Mo your ex-wife?

3 A Yes.

4 Q Who is Boo?

5 A Eileen, their sister.

6 Q The other sister.

7 A Right.

8 Q Okay. Then a little bit down, further down there,  
9 the last line on the screen says: "For MoBo, I talked  
10 with your Mo..." Who is that?

11 A Maureen, his wife.

12 Q "...last week and she had me talk to the guy who is  
13 helping us." Who were you referring to when you said "the  
14 guy who was helping us"?

15 A Jonnie Williams.

16 Q It then says, "He said he was going to call me the  
17 next day to get an address so he could send the first  
18 check." Who is the "he" in that sentence?

19 A Jonnie Williams.

20 Q Had he in fact said that to you?

21 A Apparently.

22 Q Do you have a recollection of it, sir?

23 A No.

24 Q And then the e-mail says, "I did not hear from him  
25 and I left Mo..." and which Mo is that?

**MICHAEL UNCAPHER - DIRECT**

2720

1 A Maureen, his wife.

2 Q "...a message yesterday. We will need to get that in  
3 the next week so we can keep up-to-date." You need to get  
4 what, sir?

5 A The check.

6 Q Now, if we can go back to Page 1. Well, just  
7 let -- you are not on either of these e-mails, are you,  
8 sir?

9 A No.

10 Q We will let the jury take a look at them for a second  
11 and then I'll move on. Okay, you can take down 295,  
12 please.

13 Now, at the time that you sent the e-mail we were  
14 just looking at, which to remind you was January 25th of  
15 2012, did you know the amount of money that Mr. Williams  
16 was going to be providing?

17 A No.

18 Q To your recollection, did MoBo eventually receive  
19 some money from Mr. Williams?

20 A Yes.

21 Q How much?

22 A I don't recall the total.

23 Q Do you recall a \$50,000 amount in approximately March  
24 of 2012?

25 A Yes.

**MICHAEL UNCAPHER - DIRECT**

2721

1 Q And then a \$20,000 amount in approximately May of  
2 2012?

3 A That sounds right.

4 Q Do you recall, specifically with respect to the  
5 \$50,000 payment, how you learned about that?

6 A No.

7 Q What about the \$20,000 payment?

8 A No.

9 Q Do you recall at all being involved in communications  
10 concerning some wire instructions?

11 A Yes.

12 Q Let's take a look at those. We can start with  
13 Government's 381 for identification, please. This looks a  
14 little strange. I'm going to represent to you that it is  
15 a text message from Mr. McDonnell to you. Okay?

16 A Right.

17 Q And does it concern the wiring instructions that we  
18 were just -- that you just testified about?

19 A Yes.

20 MR. HARBACH: The government offers Government's  
21 381.

22 THE COURT: It will be admitted.

23 BY MR. HARBACH:

24 Q Can you just read to us the text there, sir, from  
25 what Mr. McDonnell sends to you?

**MICHAEL UNCAPHER - DIRECT**

2722

1 A "Can you send wiring instructions to Jonnie Williams  
2 for sending 20k to MoBo account."

3 Q You don't need to read the phone number. It just  
4 says, "Thx, Bob" there at the bottom?

5 A Yes.

6 Q What's the date of that one according to the time  
7 stamp?

8 A May 18th, 2012.

9 Q Finally, take a look at Government's 385. Just blow  
10 that one up for the witness, please. Same deal here, this  
11 is, I'm going to represent to you that this is a text  
12 message, okay, from Mr. McDonnell to you. All right?

13 A Right.

14 Q Does this also concern those wiring instructions?

15 A Yes.

16 MR. HARBACH: The government offers Government's  
17 385.

18 THE COURT: It will be admitted.

19 BY MR. HARBACH:

20 Q Looking at the bottom, sir, what's the date on this  
21 one?

22 A May 18th, 2012.

23 Q Could you read to us just what the text says?

24 A "Michael, Jonnie's instructions. Can you do Monday,  
25 Bob. Hi Michael, call my secretary Monday early afternoon

MICHAEL UNCAPHER - DIRECT

2723

she returns and will promptly wire money. Jerri  
Fulkerson."

3 Q You can skip the number. Thank you. Do you recall  
4 having any conversations with Mr. McDonnell about any of  
5 the terms regarding this money from Mr. Williams?

6 A He said he was working out the terms. That's all

7 I --

8 Q Do you recall what the duration of the loans was  
9 going to be?

10 A No.

11 Q What about whether there were any payments due on a  
12 monthly basis for the loans?

13 A I don't know.

14 Q Okay. Could you take a look with me, please, at Page  
15 4 of that same report that's in front of you, sir. There  
16 is a paragraph -- are you on Page 4, sir?

17 A Yes.

18 Q There is a paragraph near the top that begins "Over  
19 the next few months..." Do you see that there?

20 A Yes.

21 Q Same drill. Could you just read that paragraph to  
22 yourself and then I'll have a question for you, okay?

23 (Witness perusing document.)

24 Let me know when you are finished.

25 A Okay.

**MICHAEL UNCAPHER - DIRECT**

2724

1 Q Are you finished reading?

2 A Yes.

3 Q First question is, do you recall having read that now  
4 whether you had an understanding at the time about whether  
5 these monies received from Mr. Williams were gifts or  
6 loans?

7 A It was a loan.

8 Q And do you recall based on conversations with  
9 Mr. McDonnell, among other things, and your ex-wife, what  
10 the term of the loans was; in other words, how long the  
11 loan term was going to be for?

12 A No payments due for three years.

13 Q Okay. And then finally, do you recall any -- whether  
14 any provision was made for Mr. Williams to use the  
15 properties from time to time?

16 A Yeah, he could use it and that would offset some  
17 payments.

18 Q Do you know -- you can put that down. Do you know  
19 whether Mr. Williams in fact ever used either Sunseeker or  
20 East Coast Palace?

21 A Not to my knowledge.

22 MR. HARBACH: Can I have a moment, please,  
23 Judge?

24 THE COURT: Sure.

25 (Counsel conferring with co-counsel.)

**MICHAEL UNCAPHER - CROSS - SMALL**

2725

1 BY MR. HARBACH:

2 Q Last couple of questions, Mr. Uncapher. Do you  
3 recall whether there there was any loan paperwork that you  
4 saw related to the \$70,000 in proceeds from Mr. Williams  
5 in 2012?

6 A No.

7 Q Do you have any recollection of whether MoBo in fact  
8 made any loan payments to Mr. Williams or Starwood Trust  
9 while you were handling payments for MoBo?

10 A No.

11 MR. HARBACH: Thank you, Your Honor. I have no  
12 further questions at this time.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MR. SMALL:

16 Q Good afternoon, Mr. Uncapher. I'm Dan Small. I  
17 represent Bob McDonnell. A few questions for you. You  
18 said that MoBo was an entity, an LLC; is that correct?

19 A Yes.

20 Q And it was owned jointly by Mo and Bob. That was the  
21 reason for MoBo, right?

22 A Right.

23 Q The name. Could we call up just for the witness  
24 RM-0502, please? Do you recognize this as the certificate  
25 for MoBo LLC, MoBo Real Estate Partners, LLC?

**MICHAEL UNCAPHER - CROSS - SMALL**

2726

1 A Yes.

2 MR. SMALL: I offer that into evidence, Your  
3 Honor.

4 THE COURT: It will be admitted. What's the  
5 number on it, again?

6 MR. SMALL: 0502, RM-0502.

7 THE COURT: All right.

8 BY MR. SMALL:

9 Q Now, so there were just two partners, correct?

10 A Right.

11 Q Mo and Bob. And if I call your wife Maureen, Mo,  
12 that's what you called her, right?

13 A Yes.

14 Q So maybe that will make it a little easier.

15 A Yes.

16 Q So, and we talked about the fact that there may be a  
17 gap between expenses and income, right?

18 A Right.

19 Q In fact, that was the understanding you said right  
20 from the beginning, correct?

21 A Right.

22 Q And so if there was a gap, it would be up to Mo and  
23 Bob to decide whether to fill it and how to fill it,  
24 correct?

25 A Right.

**MICHAEL UNCAPHER - CROSS - SMALL**

2727

1 Q And --

2 THE COURT: I have a question. It was the  
3 understanding from the beginning that they were going to  
4 be looking at 50 and \$60,000 --

5 THE WITNESS: That there was a shortfall, yes.

6 THE COURT: All right. Go ahead.

7 BY MR. SMALL:

8 Q Am I correct that the reason for that is that this  
9 was viewed more as a family gathering place than as a  
10 day-to-day profit/nonprofit investment, right?

11 A Yes.

12 Q Bob McDonnell, there are five siblings, right?

13 A Right.

14 Q And at one time or another, all five of them and  
15 their families came to these properties to use them?

16 A Yes.

17 Q And you and Mo used them?

18 A Yes.

19 Q And other members of the family would use them?

20 A Yes.

21 Q Now, most of the costs were covered by rents; is that  
22 correct?

23 A Yes.

24 Q The overwhelming majority of the costs were covered  
25 by rents each year, right?

**MICHAEL UNCAPHER - CROSS - SMALL**

2728

1 A Yes.

2 Q And we saw the mortgage numbers. Most of the  
3 mortgage payments were covered by rents, right?

4 A Yes.

5 Q But there was always going to be a gap, correct?

6 A Right.

7 Q So, and that gap, you testified, was also somewhat  
8 aggravated by the season; is that correct? It is going to  
9 be bigger during the winter.

10 A It wasn't even through the year.

11 Q Got you. When MoBo was started in 2005, Bob  
12 McDonnell was running for and became Attorney General,  
13 correct?

14 A Right.

15 Q And your wife, Mo, chose a different career path,  
16 right?

17 A Right.

18 Q And she became a very successful executive in the  
19 private sector, right?

20 A Yes.

21 Q Earning a large salary?

22 A Yes.

23 Q Had a large amount of money in stock accounts and  
24 other savings accounts?

25 A Yes.

**MICHAEL UNCAPHER - CROSS - SMALL**

2729

1 Q And in fact, you are aware that in 2012 she had over  
2 half a million dollars in income?

3 A Yes.

4 Q In the seven years that you were involved in managing  
5 MoBo's books, did you ever have any concern that the  
6 partners were not going to be able to come up with the  
7 money to pay the bills?

8 A No.

9 Q Okay. That was a given, right?

10 A Right.

11 Q The question only was, how would they do it; is that  
12 fair?

13 A Right.

14 Q And in some years, so in those seven years, there  
15 were loans from three different people; is that correct?

16 A Yes.

17 Q The father, John McDonnell, and Dr. Davis, and Jonnie  
18 Williams, right?

19 A Yes.

20 Q So I assume that means that in some years there were  
21 no loans, right?

22 A Right.

23 Q So from about 2005 through about 2008, things went  
24 pretty smoothly in the management of MoBo, correct?

25 A Yes.

**MICHAEL UNCAPHER - CROSS - SMALL**

2730

1 Q In that four or five-year time there wasn't a single  
2 late fee, correct?

3 A Right.

4 Q In 2009, in addition to what we talked about, the  
5 fact that the market crashed, right? But there were some  
6 other things that changed, weren't there?

7 A Yes.

8 Q Tell the jury what those were.

9 A In 2008, Mo and I had a baby. During her pregnancy  
10 she was on bedrest for six-and-a-half months. And then my  
11 business, I closed my business in September of 2009. And  
12 then after having our baby, she was, she had a significant  
13 amount of health concerns that we were in and out of the  
14 hospital, or she was in and out of the hospital right  
15 after our daughter was born, and then up to and including  
16 going to the Mayo Clinic for ten days.

17 Q With all of this going on, where did MoBo fit on your  
18 list of priorities?

19 A At the bottom.

20 Q Okay. And is it fair to say that you started to have  
21 problems just with managing the cash?

22 A Right.

23 Q And there started to be a lot of late fees.

24 A Yes.

25 Q And those late fees reflected your mismanagement of

**MICHAEL UNCAPHER - CROSS - SMALL**

2731

1 the money, didn't they?

2 A Right.

3 Q They didn't reflect problems with finances, right?

4 A Right.

5 Q Mo had plenty of money, she just needed to know when  
6 to put it up, right?

7 A Right, she did.

8 Q I'm not going to go into the details, Mr. Uncapher,  
9 but isn't it fair to say that there were also problems  
10 with your having moved some money out of the MoBo account  
11 to other accounts?

12 A Yes.

13 Q And that also made the finances of MoBo a little more  
14 difficult.

15 A Right.

16 Q But that all got resolved, right?

17 A Right.

18 Q So the loan from the father, John McDonnell, that was  
19 back in 2007; is that right?

20 A Right.

21 Q And then the Dr. Davis loan was in 2009, correct?

22 A Yes.

23 Q Okay. And then we talked about the Jonnie Williams  
24 loans in 2012, correct?

25 A Yes.

**MICHAEL UNCAPHER - CROSS - SMALL**

2732

1 Q The Jonnie Williams loan, the first loan, I think we  
2 saw, was in March of -- I'm sorry, in May of 2012; is that  
3 correct?

4 A Yes.

5 Q Now, I was right the first time. It was in March of  
6 2012. Right?

7 A Uh-huh.

8 Q And you are aware -- and so, again, they made a  
9 decision that they would use a loan to fill that gap.

10 A Right.

11 Q But there was plenty of other money available to fill  
12 that gap, right?

13 A Right.

14 Q And in fact, you are aware, aren't you, that within  
15 literally days of that \$50,000 loan in March of 2012, Mo  
16 got a bonus of \$70,000 from her company, right?

17 A Right.

18 Q So there was never any desperation, was there?

19 A No.

20 MR. HARBACH: Objection.

21 THE COURT: Sustained.

22 BY MR. SMALL:

23 Q You knew the bills were going to be paid one way or  
24 the other, right?

25 A Yes.

**MICHAEL UNCAPHER - CROSS - BURCK**

2733

1 MR. HARBACH: Objection.

2 THE COURT: Sustained.

3 MR. SMALL: Nothing further.

4 THE COURT: Mr. Burck?

5 **CROSS-EXAMINATION**

6 BY MR. BURCK:

7 Q Good afternoon, Mr. Uncapher.

8 A Hi.

9 Q My name is Bill Burck, and I represent Maureen  
10 McDonnell, your former sister-in-law.

11 A Right.

12 Q I just want to focus on the two phone calls that you  
13 had with Jonnie Williams. One, you testified you recall  
14 it was in the summer of 2011, and the other one you recall  
15 was in the early part of 2012. Remember that testimony?

16 A Right.

17 Q Is it possible that -- you had to be shown a document  
18 to refresh your recollection on the timing of the first  
19 call. Do you remember that?

20 A Yes.

21 Q Is it possible that the call actually occurred in the  
22 spring of 2011?

23 A It is possible, yes.

24 Q It is possible?

25 A Yes.

**MICHAEL UNCAPHER - CROSS - BURCK**

2734

1 Q Please call up Government Exhibit 110. This has  
2 already been admitted into evidence. So I don't believe  
3 you have ever seen this before, but this is a Mansion log,  
4 May 2nd, 2011.

5 A Yes.

6 Q And if you will blow up the 9:24 time in the middle.  
7 It says, "John Williams." I'll proffer to you that's  
8 Jonnie Williams.

9 A Yes.

10 Q And he entered the Mansion at 9:24 and left at 11:25.  
11 102, I will also let you know, is a term for  
12 Ms. McDonnell, the First Lady.

13 A Right.

14 Q 101 being the Governor, 102 being the First Lady.  
15 I'd like to show just the witness RM-0106. And it would  
16 be a specific page, which is 220. Could you blow up the  
17 bottom part there? Actually, I'm sorry, just blow up the  
18 top first just to identify it. Sir, these are phone  
19 records of Maureen McDonnell, the former First Lady. And  
20 these are from Verizon Wireless. If you go to the bottom  
21 of that page, highlighted, you will see a series of phone  
22 calls. Your cell phone number at the time, the last four  
23 digits only, were 2465?

24 A Right.

25 Q And do you recall that your then wife's phone number

**MICHAEL UNCAPHER - CROSS - BURCK**

2735

1 at the time, the last four digits, was 0673?

2 A Yes.

3 Q Do you recall that the Governor's cell phone at the  
4 time was 0714?

5 A Yes.

6 MR. BURCK: We would offer RM-0106-220, 221, and  
7 287 into evidence. I would offer all of the phone  
8 records, Your Honor, but we don't have them all redacted  
9 yet.

10 THE COURT: All right. 220, 221, and 287 will  
11 be admitted.

12 BY MR. BURCK:

13 Q Sir, you will see there that there are, there is a  
14 call starting at 9:57 a.m., this is from Ms. McDonnell to  
15 2465 on May 2nd. Do you see that?

16 A Yes.

17 Q That's your phone number?

18 A Yes.

19 Q You will see that it is for one minute.

20 A Right.

21 Q Then you will see below that there is a phone call  
22 from Ms. McDonnell to 0673, which I think you have  
23 testified is your former wife's number?

24 A Yes.

25 Q That's for one minute.

**MICHAEL UNCAPHER - CROSS - BURCK**

2736

1 A Right.

2 Q You will see below that there is a call from  
3 Ms. McDonnell, two minutes after that, to 0714, which you  
4 testified is the Governor's cell phone, correct?

5 A Right.

6 Q Right after that, you see that there is, one minute  
7 later, there is another call to 0673, which is Maureen,  
8 your wife's, phone number?

9 A Yes.

10 Q Another one a minute later again to your wife, and  
11 then another one a minute later to you.

12 A Yes.

13 Q So that's six phone calls to your former wife, the  
14 Governor, and yourself in that roughly five-minute period.

15 A Yes.

16 Q Then you will see on the next page, turn the page to  
17 221, please, the very top. There is a phone call at  
18 10:44, this time from you to Ms. McDonnell. Do you see  
19 that?

20 A Yes.

21 Q And that is actually for 13 minutes.

22 A Right.

23 Q So that looks like you actually had a conversation  
24 with her in that period, right?

25 A Right.

**MICHAEL UNCAPHER - CROSS - BURCK**

2737

1 Q I showed you in the Mansion log earlier that  
2 Mr. Williams was present at the Mansion on May 2nd from  
3 9:24 to approximately 11:30 that day, remember that?

4 A Yes.

5 Q So does this help refresh your recollection as to  
6 when you had this phone call with Maureen McDonnell that  
7 she put Jonnie Williams on the call?

8 A Yes.

9 Q You think it was May 2nd, 2011?

10 A Yes.

11 Q Now, focusing on that conversation, you testified  
12 that you got a call, you called or received a phone call  
13 from Maureen.

14 A Right.

15 Q It looks like that you actually called her back,  
16 right?

17 A Right.

18 Q And you said that Maureen gave you the phone to talk  
19 to Jonnie Williams?

20 A Gave Jonnie the --

21 Q I'm sorry, excuse me, gave Jonnie Williams the phone  
22 to talk to you.

23 A Right.

24 Q Because she was present with Jonnie Williams; that's  
25 what you understood?

**MICHAEL UNCAPHER - CROSS - BURCK**

2738

1 A Right.

2 Q Can you tell us, what did Maureen McDonnell say to  
3 you describing Jonnie Williams? The best you recall.

4 A Just that he was interested in buying or investing in  
5 the properties.

6 Q Okay. Did she mention to you that he has been  
7 looking for property in Virginia Beach?

8 A Not that I remember.

9 Q Okay. And when you talked to Jonnie Williams about  
10 the properties, what did you say to him, to the best of  
11 your recollection?

12 A I just told him what we owed on each property and  
13 what the average expenses were for the mortgages.

14 Q Did you tell him what the annual deficit was?

15 A Yes.

16 Q What was that?

17 A Between 50 and \$60,000.

18 Q The words 50, \$60,000 came out of your mouth?

19 A Yes.

20 Q Then Mr. Williams handed the phone back to Maureen?

21 A Yes.

22 Q And when you said 50 or \$60,000 to Mr. Williams, was  
23 Maureen McDonnell on the phone?

24 A Was she on the phone?

25 Q Was she on the phone?

**MICHAEL UNCAPHER - CROSS - BURCK**

2739

1 A I was talking to Jonnie.

2 Q He didn't have it on speaker or anything like that?

3 A Not that I know of, no.

4 Q Okay. Now turning to page RM-0106-287. Actually,  
5 before we do that, can you call up Government Exhibit 290?  
6 It is already admitted into evidence. If you could blow  
7 up the 11:05 period. You will see that there is a  
8 reference there, this is again a Mansion log, and this is  
9 dated January 19th, 2012. You will see there is a  
10 reference to Williams, Bobby is crossed out, it says, "To  
11 see 102." I'll proffer to you that's Jonnie Williams to  
12 see the First Lady. He comes in at 11 o'clock and leaves  
13 at 1300, 1 o'clock.

14 A Yes.

15 Q If you could show Government Exhibit 295. This is  
16 already admitted into evidence. And the bottom e-mail.  
17 This is from you, you testified a bit about this e-mail,  
18 from you on January 25th, 2012, so about six days later,  
19 to Bob and Maureen McDonnell. It is actually to Bob  
20 McDonnell, I think you testified, "Dear Bob." The last  
21 sentence you say on that page, "For MoBo, I talked with  
22 your Mo last week and she had me talk to the guy who is  
23 helping us." Right?

24 A Right.

25 Q And "your Mo," you testified, was Maureen McDonnell,

**MICHAEL UNCAPHER - CROSS - BURCK**

2740

1 the First Lady, right?

2 A Right.

3 Q You were telling him that you had spoken to Maureen  
4 McDonnell the prior week, right?

5 A Yes.

6 Q Going back to, please put up the phone records for  
7 RM-0106-0287. Blow up the middle there for me, please.  
8 You will see, these are phone records of Maureen  
9 McDonnell. Again, there are two calls, one to you and one  
10 from you. One is at 12:01 p.m. on January 19th. This is  
11 to you from Maureen McDonnell. And there is one on  
12 January 19th at 12:11, which is from you back to Maureen  
13 McDonnell, 12 minutes. Does this help refresh your  
14 recollection as to when you had the call with Jonnie  
15 Williams the second time?

16 A Yes.

17 Q So January 19th, 2012, fair to say?

18 A Yes.

19 Q And during that call, you testified that it was more  
20 or less sort of a replay of the first phone call; is that  
21 right?

22 A Right.

23 Q And you discussed in that call the financial  
24 situation of MoBo?

25 A Yes.

**MICHAEL UNCAPHER - REDIRECT**

2741

1 Q And you told him again about a 50 to \$60,000 deficit?

2 A Yes.

3 Q And those words again came out of your mouth, right?

4 A Yes.

5 MR. BURCK: Your Honor, no further questions for  
6 us.

7 THE COURT: All right. Redirect?

8 MR. HARBACH: Yes, Your Honor, thank you.

9 **REDIRECT EXAMINATION**

10 BY MR. HARBACH:

11 Q Mr. Uncapher, during either of these phone calls  
12 where you spoke with Jonnie Williams, did he say to you,  
13 "Sounds great, Michael, I'm going to loan MoBo \$70,000"?  
14 Did he tell you that?

15 A No.

16 Q Do you recall how you learned that Mr. Williams was  
17 going to be helping you out?

18 A I don't recall specifically. I just heard it from  
19 either Bob or Maureen, my wife.

20 Q You testified on cross-examination to Mr. Small with  
21 respect to the loan from Mr. McDonnell's father. He asked  
22 you, "That was in 2007, correct?" And you said, "Right."  
23 My question for you is, do you actually remember that that  
24 loan was in 2007?

25 A It was early on. I don't exactly remember what the

MICHAEL UNCAPHER - REDIRECT

2742

1 date was.

2 Q Okay. How many times did you meet with Mr. Small  
3 before you testified here today, sir?

4 A Three.

5 Q And after the one interview that you have testified  
6 about you had with the FBI that was approximately a year  
7 ago, how many times have you met with government counsel?

8 A None.

9 Q You testified on cross-examination about the  
10 anticipated shortfall for MoBo year to year, and I think  
11 His Honor asked you a question about the 50, \$60,000  
12 amount. Do you recall that exchange?

13 A Yes.

14 MR. HARBACH: Could I show the witness for  
15 identification, please, Page 8 of Government's 513?

16 BY MR. HARBACH:

17 Q Do you recognize this document, sir?

18 A I don't know who did it.

19 Q Does this look like the type of document that  
20 Ms. Chamberlain prepared based on the books of the  
21 business?

22 A Again, I never saw this. She sent those directly to  
23 Dan Cook.

24 Q Okay. Then we will leave it up just for the witness,  
25 please, and look at Page 9. I'm sorry, take that down for

**MICHAEL UNCAPHER - REDIRECT**

2743

1 a second, please. Do you recall exactly how much the  
2 shortfall was for each of the years of 2008 through 2012?

3 A I don't know exactly. It was an estimate of 50, that  
4 was what we banked on, an estimated 50 to 60.

5 Q Now, let's take a look now at Page 9 of Government's  
6 513 just for the witness's review. Blow that up for him.  
7 Are you able to see that okay, sir?

8 A Yes.

9 Q Does that refresh your recollection about whether in  
10 fact for the years from 2008 to 2012, at least, and in  
11 three of those five years, the shortfall was substantially  
12 in excess of \$60,000?

13 A Again, I never saw those things, I was always going  
14 off the estimate. I see what's written there.

15 Q All I can ask you is what your recollection is. Do  
16 you recall --

17 A No --

18 Q Let me ask the question first, please. Do you recall  
19 in 2009, 2010 --

20 MR. SMALL: Your Honor, may we approach? He is  
21 talking about depreciation and paper losses. I object to  
22 the use of a document this witness knows nothing about.

23 THE COURT: That objection will be sustained.

24 MR. HARBACH: You can take the document down,  
25 please.

**MICHAEL UNCAPHER - REDIRECT**

2744

1 BY MR. HARBACH:

2 Q Did you know at the time, do you have any  
3 recollection of knowing in 2009, 2010, 2011, what in fact  
4 the cash shortfall was year to year? Did you know?

5 A No. For me it was always an estimate of 50 to  
6 \$60,000.

7 Q And what was that based on?

8 A Just rough guesses of handing over the numbers to  
9 Brenda.

10 Q And then my last question is, did I understand your  
11 testimony correctly on cross-examination to be that when  
12 the business was formed, it was anticipated that there  
13 would be a cash shortfall year to year of 50 to \$60,000;  
14 is that your testimony?

15 A That was the rough estimate, yes.

16 MR. HARBACH: Thank you, Your Honor.

17 THE COURT: I have a question.

18 BY THE COURT:

19 Q Were the loans, and I guess we have identified three,  
20 were the loans to fill the shortfall?

21 A Yes.

22 Q So at one time there was a \$100,000 shortfall?

23 A Apparently. Like I said, I've never seen that  
24 document.

25 Q All right. Thank you.

**MICHAEL UNCAPHER - REDIRECT**

2745

1                   THE COURT: You may stand down, sir.

2                   (Witness stood aside.)

3                   All right, we will go ahead and take a break. 15  
4 minutes.

5                   (Recess taken from 3:41 p.m. to 3:55 p.m.)

6                   ///

7                   ///

8                   ///

9                   ///

10                  ///

11                  ///

12                  ///

13                  ///

14                  ///

15                  ///

16                  ///

17                  ///

18                  ///

19                  ///

20                  ///

21                  ///

22                  ///

23                  ///

24                  ///

25                  ///

1 MR. BROWNLEE: Your Honor --

2 THE COURT: Yes.

3 MR. BROWNLEE: -- before we bring the jury in,  
4 can we -- Ms. Krueger is next?

5 MR. DRY: Yes.

6 MR. BROWNLEE: Yeah. Can we just -- can we  
7 raise one issue with this next witness before she comes  
8 in, Your Honor?

9 THE COURT: Okay.

10 MR. BROWNLEE: Do you want us to --

11 THE COURT: Come on up.

12 (At Bench.)

13 MR. BROWNLEE: Judge, I think that the  
14 government is going to try to introduce an e-mail, going  
15 to try to introduce that.

16 MR. FAULCONER: Let me double-check. It may be  
17 an e-mail depending on her recollection.

18 Which one is that?

19 THE COURT: What's -- who's the witness?

20 MR. FAULCONER: The witness' name is Sharon  
21 Krueger, Your Honor. K-R-U-E-G-E-R.

22 What's the date of that one, John?

23 MR. BROWNLEE: It's 11/22/11.

24 MR. FAULCONER: Can I see that?

25 MR. BROWNLEE: Sure.

1                   MR. FAULCONER: Is this the one that has a photo  
2 on it, the other version?

3                   MR. BROWNLEE: No.

4                   MR. FAULCONER: I don't think we currently  
5 intend to offer it, but it's possible.

6                   MR. BROWNLEE: Just to raise this, Your Honor.  
7 Basically, this is an e-mail that summarizes a call she  
8 had with John Lazo. Mr. Lazo has already testified. So  
9 when he was on the stand, this particular subject  
10 wasn't -- they didn't go into it so we didn't cross on it.

11                  And now what I think they are going to try to do is  
12 ask her about this conversation, about what he told her.  
13 And we just can't confront him now. He's come and gone.  
14 He was here. And so we just wanted to raise this. If  
15 they are not going to do it, that's fine, but I just  
16 wanted to do it before the witness got in the seat.

17                  THE COURT: I don't see any particular problem  
18 with that. If -- if you have to use it, you'll have an  
19 opportunity to deal with whatever he does here. That's an  
20 objection that will be overruled at this time.

21                  MR. FAULCONER: Thank you, Your Honor.

22                  (In Open Court.)

23                  (The jury entered the courtroom.)

24                  THE COURT: All right. Government, call your  
25 next witness.

1 MR. FAULCONER: Yes, Your Honor. The  
2 United States calls Sharon Krueger.

3 THE COURT: All right.

4 **SHARON KRUEGER,**

5 called as a witness by and on behalf of the government,  
6 having been first duly sworn by the Clerk, was examined  
7 and testified as follows:

8 MR. FAULCONER: May I inquire, Your Honor?

9 THE COURT: Go ahead.

10 **DIRECT EXAMINATION**

11 BY MR. FAULCONER:

12 Q Good afternoon.

13 A Good afternoon.

14 Q Could you please state your name, and spell your last  
15 for the court reporter.

16 A It's Sharon Ann Krueger. K-R-U-E-G-E-R.

17 Q And, Ms. Krueger, what city do you currently live in?

18 A I live in Earlysville, Virginia.

19 Q And where do you currently work?

20 A I work for the University of Virginia.

21 Q And how long have you worked at UVA?

22 A I have worked at UVA since July of 2003.

23 Q And what is your current title at UVA?

24 A My current title is I'm the Program Director for  
25 Innovation Grants & Relationships.

1 Q Now, prior to taking on that role and focusing in on  
2 the time frame of August to December of 2011, what was  
3 your role during that time frame?

4 A I oversaw strategic partnerships. Basically, I'm  
5 still doing the same that I did then, but I have added  
6 responsibilities that just started in May.

7 Q And which office within UVA are you working in?

8 A I work for the Vice President for Research, and I  
9 have a cross appointment in an initiative out of the VPR  
10 Office called UVA Innovation.

11 Q Now, the VPR Office is that the Vice President for  
12 Research?

13 A Correct.

14 Q And could you tell us, just briefly, what exactly is  
15 UVA Innovation?

16 A UVA Innovation is primarily the technology transfer  
17 arm of the university. And part of that involves -- in  
18 addition to the technology transfer arm, it involves  
19 oversight on our internal proof-of-concept Translational  
20 Research funds. Industry partnerships that advance  
21 research.

22 Q And so during that time frame of about August to  
23 December of 2011, what were your day-to-day  
24 responsibilities, generally speaking?

25 A I serve as a point person for research industry --

SHARON KRUEGER - DIRECT

2750

1 serve as a point person for industry interactions for R&D,  
2 for research and development. I also partner with people  
3 across the university to plan and manage and run  
4 entrepreneurial and innovation events, be it at the  
5 university level, the community level, and all the way up  
6 to the national level.

7 Q Now, Ms. Krueger, UVA, is that a state school or a  
8 private school?

9 A We are a state school.

10 Q As a UVA employee, do you receive certain e-mails  
11 addressed to all state employees?

12 A Yes, I do.

13 MR. FAULCONER: I'd like to show the witness  
14 what's already been admitted as Exhibit 525. And if we  
15 could zoom in just on sort of the top half of that.

16 BY MR. FAULCONER:

17 Q Ms. Krueger, does this look like one of the types of  
18 e-mails that you would get on the state employees's  
19 ListServ?

20 A Yes, it does.

21 Q Is this dated during a time period when you were  
22 employed by UVA?

23 A Yes, it is.

24 Q And would some of the e-mails that you received have  
25 this seal and Office of Governor Bob McDonnell at the top

SHARON KRUEGER - DIRECT

2751

1 of them?

2 A Yes. They all do.

3 Q All of them at least that come from the Governor's  
4 Office?

5 A That come from the Governor's Office. Yes.

6 Q Now --

7 MR. FAULCONER: We can go ahead and take that  
8 down.

9 BY MR. FAULCONER:

10 Q Now, as someone working within UVA Innovation as part  
11 of the Vice President for Research, do you interact with  
12 state government officials who aren't UVA officials?

13 A Yes, I do.

14 Q And, generally speaking, would you prefer to have  
15 good relationships or bad relationships with those people?

16 A Good relationships.

17 Q Now, while working at UVA Innovation, have you also  
18 helped plan events related to UVA research initiatives?

19 A Yes, I have.

20 Q And have those included events in which you have  
21 invited public officials to attend them?

22 A Yes.

23 Q Has that included the Governor?

24 A Yes.

25 Q Did that include when Mr. McDonnell, when he was

SHARON KRUEGER - DIRECT

2752

1 Governor?

2 A Yes.

3 Q And have those included events in which Mr. McDonnell  
4 declined to attend, despite having been invited?

5 A Yes.

6 Q I'd like to show you what's been marked for  
7 identification as Exhibit 517. Now, Ms. Krueger, is this  
8 a fairly lengthy e-mail exchange between you and other  
9 individuals at UVA?

10 A Yes.

11 Q And does this pertain to an invitation for  
12 Mr. McDonnell to attend an event in 2013?

13 A Yes, it was.

14 MR. BROWNLEE: Your Honor, I'm going to object.  
15 This is an invitation that was declined in May of 2013. I  
16 don't know what the relevance to this case would be.

17 THE COURT: Overruled.

18 MR. FAULCONER: Your Honor, we'd offer Exhibit  
19 517 into evidence.

20 THE COURT: It will be admitted.

21 BY MR. FAULCONER:

22 Q Now, without going through the whole e-mail exchange,  
23 can you just tell us, if you recall, what the event was  
24 that you invited Mr. McDonnell to attend?

25 A Charlottesville and UVA, as the host school, was

1 selected by the Association of Public and Land-Grant  
2 Universities to host a summer meeting for one of their  
3 Councils and Commissions on graduate studies, and the  
4 Commission on Innovation and Economic Prosperity.

5 Last year -- or the prior year, when the conference  
6 was at the University of Nebraska, the Governor spoke. So  
7 we were just following the protocol that Nebraska  
8 followed, did the year before.

9 Q And when you say the Governor spoke at the prior  
10 year, was that the Governor of Nebraska?

11 A The Governor of Nebraska.

12 Q And why did you want Mr. McDonnell to attend the  
13 event?

14 A More so, we were just following the protocol that if  
15 Nebraska had their Governor when the event was in  
16 Nebraska, we wanted our Governor at the event when it was  
17 held in Virginia.

18 Q To your recollection, did Mr. McDonnell actually  
19 attend this event?

20 A No, he did not.

21 Q Did he send someone in his place? Do you recall?

22 A Yes, he did.

23 Q And who was that?

24 A That was Secretary Jim Cheng.

25 Q Do you know which secretary he is?

1 A Oh, of Trade and Commerce.

2 MR. FAULCONER: All right. We can take that  
3 down.

4 BY MR. FAULCONER:

5 Q Now, before 2011, had you heard of the company either  
6 Star Scientific or Rock Creek Pharmaceuticals?

7 A No, I had not.

8 Q How about Anatabloc or anatabine?

9 A No, I had not.

10 Q Do you recall learning, at some point in 2011, about  
11 an event at the Governor's Mansion involving Star  
12 Scientific and its Anatabloc product?

13 A Yes, I did. From one of my colleagues.

14 Q Was that individual Dr. John Lazo?

15 A Yes, it was.

16 Q Did you also talk about it with some other people?

17 A Really, pretty much it was John -- the best I can  
18 recall, it was just Dr. Lazo.

19 Q Now, do you recall actually having both some e-mail  
20 correspondence and a couple of phone conversations with  
21 various people in 2011 about Star Scientific and Rock  
22 Creek Pharmaceuticals?

23 A Yes, I do.

24 Q And in the course of that process, did you learn  
25 about a number of UVA doctors who had received planning

SHARON KRUEGER - DIRECT

2755

1 grants from Star Scientific for the purpose of creating  
2 study proposals?

3 A Yes, I did.

4 Q And I'd like to show you what's been marked for  
5 identification as Exhibit 268. Ms. Krueger, do you  
6 recognize this as a chart of essentially doctors and --  
7 that received grants?

8 A Yes.

9 Q And is this a document that you actually had in your  
10 files as you were looking into this?

11 A Yes. This is created by our Office of Sponsored  
12 Programs. It's a standard research document.

13 MR. FAULCONER: Your Honor, we'd offer Exhibit  
14 268 into evidence.

15 THE COURT: It will be admitted.

16 MR. FAULCONER: All right. Now, if we could  
17 zoom in on the first five columns there. I guess it  
18 doesn't get that. If we could zoom in on sort of the top  
19 half to start. Thank you, Mr. Starnes.

20 BY MR. FAULCONER:

21 Q Now, do you see the names there, Ronald Turner, Brian  
22 Annex, and Eugene Barrett?

23 A Yes, I do.

24 Q And do you know who those individuals are?

25 A Yes, I do.

SHARON KRUEGER - DIRECT

2756

1 Q Who are they?

2 A Well, they are all clinicians in the School of  
3 Medicine, clinician researchers in the School of Medicine.

4 Q And do you know why they ended up on this chart?

5 A They received a pilot grant from Star Scientific.

6 MR. FAULCONER: And if we could scroll down a  
7 little bit.

8 BY MR. FAULCONER:

9 Q Do you see there also the name Jonathan Truwit?

10 A Yes, I do.

11 Q Is that another UVA researcher, who, to your  
12 understanding, had a grant from Star Scientific?

13 A Based on this document, yes.

14 Q Now, when you were looking into this, what was your  
15 understanding of what the purpose of the -- I think you  
16 said pilot grant was?

17 A Yes. My understanding was that it was just to start  
18 to do -- to test the potential compound in different  
19 disease states.

20 Q And was it your understanding of whether there would  
21 be any follow-on funding from any alternative source later  
22 on?

23 A No, not to my -- not to my knowledge.

24 Q Well, do you recall what the size of the initial  
25 planning grants were that came in?

SHARON KRUEGER - DIRECT

2757

1 A Yeah. They were \$25,000 each.

2 Q And was that all the money to fund all the research  
3 or would there need to be an application made at some  
4 point for additional funding?

5 A Via e-mail conversation, I know a request for  
6 proposals went out for the -- for the researchers to apply  
7 to get the money.

8 Q Okay. And was that to apply for a larger amount of  
9 funding to actually do the studies themselves?

10 A No. That was to apply to get the \$25,000 each.

11 Q All right. Well, let me show you what's been marked  
12 for identification as Exhibit 259. Do you recognize this  
13 as an e-mail from an individual named Jeffrey Blank to  
14 you?

15 A Yes.

16 Q Is this dated November 8th, 2011?

17 A Yes.

18 Q And is this towards the beginning of when you started  
19 to look into these grants?

20 A Yes.

21 MR. FAULCONER: Your Honor, we'd offer Exhibit  
22 259 into evidence.

23 THE COURT: It will be admitted.

24 BY MR. FAULCONER:

25 Q Now, can you start by telling us who Jeffrey Blank

SHARON KRUEGER - DIRECT

2758

1 is?

2 A Jeffrey Blank also works in the Vice President for  
3 Research Office. He primarily is -- he's not on the  
4 research end like I am. He primarily takes care of a lot  
5 of the HR issues. He works with gathering a lot of the  
6 information for reports that are due to the President of  
7 our university.

8 Q Now, do you see there where -- do you see what the  
9 subject line of this e-mail says?

10 A Yes.

11 Q And what is the subject line?

12 A "Star Scientific and State Tobacco Commission  
13 Collaboration" with a question mark.

14 Q And in the body of the e-mail that's forwarded to  
15 you, do you see a reference to planning grants of \$25,000  
16 each?

17 A Yes, I do.

18 Q And those doctors' names, Gene Barrett, Ron Turner,  
19 and Brian Annex, are those some of the doctors we saw on  
20 the prior page?

21 A Yes, they are.

22 Q Now, can you tell us -- where the sentence says, "At  
23 UVA they went to," what does it say after "to support" in  
24 terms of where the larger amount of money was supposed to  
25 come from?

SHARON KRUEGER - DIRECT

2759

1 A "To support planning work in advance of what was to  
2 be a larger award expected from the" -- "from the Virginia  
3 Tobacco Commission that Rock Creek indicated to the  
4 schools they would secure."

5 Q All right.

6 MR. FAULCONER: Now, if we could scroll down a  
7 little bit.

8 BY MR. FAULCONER:

9 Q Could you read for us just the first two sentences of  
10 that second paragraph?

11 A "Peggy mentioned these planning awards were announced  
12 by the Governor of Virginia at a public event. In  
13 addition, the Governor's wife has publicly disclosed that  
14 she is a happy user of the company's products and perhaps  
15 the Governor as well."

16 Q Do you know who Peggy is that's referred to in  
17 that --

18 A Yes. Peggy Shupnik is the Dean of Research in the  
19 School of Medicine and also an endocrinologist researcher.

20 Q All right.

21 MR. FAULCONER: We can take that down.

22 BY MR. FAULCONER:

23 Q Now, after learning this information and getting  
24 these e-mails forwarded to you, did you actually do some  
25 due diligence or looking into Rock Creek Pharmaceuticals

1 and Star Scientific?

2 A Yes.

3 Q And did you keep individuals who worked with you in  
4 the VPR's Office apprised of what you found?

5 A Yes, I did.

6 Q And was one of those supervisors or individuals  
7 someone named Mark Crowell?

8 A Yes.

9 Q And is his name actually Wriston Mark Crowell?

10 A That -- legally, yes. But he professionally goes by  
11 Mark Crowell.

12 Q And was he the predecessor to the position you're now  
13 in?

14 A No. He was actually my boss.

15 Q Got it.

16 A And he has since retired from the university.

17 Q Got it. Now, I'd like to show you what's been marked  
18 for identification as Exhibit 261. Is that an e-mail  
19 exchange between you and Mr. Crowell the following day, on  
20 November 9th, 2011?

21 A Yes.

22 Q And is this discussing what you were looking into?

23 A Yes.

24 MR. FAULCONER: Your Honor, we'd offer Exhibit  
25 261 into evidence.

SHARON KRUEGER - DIRECT

2761

1 THE COURT: It will be admitted.

2 BY MR. FAULCONER:

3 Q Now, Ms. Krueger, could you read the bottom e-mail,  
4 the one that you sent to Mr. Crowell on November 8th,  
5 2011, at 8:17 p.m. Just that first paragraph there.

6 A "So got more information, interesting. I'm going to  
7 do a bit of diligence as well and let you know what I  
8 found out. Personally, I think the Governor's wife or  
9 assistant may look like the Governor is influencing UVA to  
10 a potential action. Just odd in my opinion."

11 Q And what does Mr. Crowell write in response to you?

12 A "Great reports. Kind of agree that the Rock Creek  
13 thing - this makes me uncomfortable."

14 Q All right.

15 MR. FAULCONER: We can take that down.

16 BY MR. FAULCONER:

17 Q Now, I'd like to show you what's been marked for  
18 identification as Exhibit 262. Is this another e-mail  
19 from you to Mr. Crowell dated November 9th, 2011?

20 A Yes, it is.

21 Q And is this another e-mail where you're forwarding  
22 some of the information that you've obtained?

23 A Yes, it is.

24 MR. FAULCONER: Your Honor, we'd offer Exhibit  
25 262 into evidence.

SHARON KRUEGER - DIRECT

2762

1 THE COURT: It will be admitted.

2 MR. FAULCONER: Now, if we could zoom out and  
3 then go to the second page of this document.

4 BY MR. FAULCONER:

5 Q Can you tell us what that photo is that is embedded  
6 within this e-mail?

7 A This is a photo of Governor McDonnell with a  
8 microphone, speaking at an event with a company logo  
9 behind him.

10 Q And do you recall where you obtained this photograph  
11 from before you put it in the e-mail?

12 A I captured it from a Facebook page.

13 Q And do you know if that was a Facebook page  
14 affiliated with Star Scientific or Rock Creek?

15 A You know, honestly, I don't remember, because it was  
16 taken down almost immediately. I honestly don't remember.

17 Q All right.

18 MR. FAULCONER: Well, if we could go to the  
19 first page of the e-mail.

20 BY MR. FAULCONER:

21 Q Could you read the last bullet point in that e-mail,  
22 just at the very bottom under --

23 MR. FAULCONER: Yeah. Right there.

24 BY MR. FAULCONER:

25 Q Just that last e-mail where it says, "Virginia State

1 Government."

2 A "Set up visit to UVA by Curtis Wright from Rock  
3 Creek. UVA: You, me, Tom" -- that's referring to the  
4 Vice President for Research -- "Peggy, Ron and maybe Phil.  
5 Rock Creek: Curtis Wright. Virginia State Government:  
6 Yes/no -- this is the awkward part -- as Governor  
7 McDonnell has publicly announced his support for the  
8 parent company Star Scientific."

9 Q Now, that statement there about Mr. McDonnell, what  
10 was your basis for making that statement?

11 A The photo and just the press release.

12 Q Now, I'd like to ask you about as part of your due  
13 diligence, did you also have some phone conversations with  
14 Dr. Lazo? I think you referenced him earlier.

15 A Yes, I did.

16 Q And what was your understanding of his role within  
17 this whole process as it unfolded?

18 A So he attended a luncheon at the Governor's Mansion,  
19 and we talked about what that event was like.

20 Q During at least one of -- did you have just one  
21 conversation with him or do you think you had several?

22 A According to his testimony, it looked like he called  
23 me when he was driving back. But I think he called my  
24 boss because I was --

25 Q Ms. Krueger, just focusing on your recollection and

SHARON KRUEGER - DIRECT

2764

1 not commenting on anything else. Do you recall having any  
2 conversations with Dr. Lazo?

3 A Yes, I do.

4 Q And do you recall one of those being in November of  
5 2011?

6 A Yes, I do.

7 Q All right. I'd like to show you what's been marked  
8 for identification as Exhibit 264. In looking at this  
9 page, and then flipping briefly to the second page, are  
10 these handwritten notes that you took during your  
11 conversation with Dr. Lazo, at least whatever one occurred  
12 in November 2011?

13 A Yes, they are.

14 MR. FAULCONER: Your Honor, we'd offer Exhibit  
15 264 into evidence.

16 MR. BROWNLEE: Just note our objection, Your  
17 Honor.

18 MR. KOFFMANN: Same objection.

19 THE COURT: They will be admitted.

20 BY MR. FAULCONER:

21 Q Now, what are the -- after you write down, "Call with  
22 John Re: Meeting at Gov - lunch," do you know what you're  
23 referring to when you say, "Gov" there, before the word  
24 "lunch"?

25 A Governor.

SHARON KRUEGER - DIRECT

2765

1 Q And what do you write underneath that on sort of the  
2 first line where there are two lines on either side?

3 A "Governor Mansion for lunch."

4 Q Do you recall that coming up in your conversation  
5 with Dr. Lazo?

6 A Yes, I do.

7 MR. FAULCONER: Now, if we could go to the  
8 second page, and the bottom right-hand portion.

9 BY MR. FAULCONER:

10 Q Do you see there --

11 MR. FAULCONER: Yep. There we go.

12 BY MR. FAULCONER:

13 Q Do you see there what you write on the first two  
14 lines that are being shown here?

15 A Yes.

16 Q What do you write?

17 A "Governor wants to get something good out of tobacco  
18 - grow - harvest - medical."

19 Q And do you recall that coming up in your conversation  
20 with Dr. Lazo?

21 A Yes.

22 Q Now, going over to the left of this document, do you  
23 see where you say -- there's something. Am I reading this  
24 correctly? It says, "It's transparent and not put us in  
25 comprised position." Do you see that?

SHARON KRUEGER - DIRECT

2766

1 A Yes.

2 Q What are you talking about there?

3 A We were talking about if we would put in a Tobacco  
4 Commission grant, to make sure that everything is  
5 completely transparent and not to put UVA in a compromised  
6 position with doing research -- how can I describe this?  
7 We didn't want to be put in a position that we were being  
8 told to do or directed to do research.

9 Q By whom?

10 A By the company.

11 Q Just the company or did it also include politics?

12 A To the best that I can remember, probably both.

13 Q All right.

14 MR. FAULCONER: We can go ahead and take that  
15 down.

16 BY MR. FAULCONER:

17 Q Now, at some point after your conversation with  
18 Dr. Lazo, did you participate in a conference call with  
19 some individuals affiliated with Rock Creek and Star?

20 A Yes, I did.

21 Q And do you recall, was that later on, towards the end  
22 of November 2011?

23 A Yes, it was.

24 Q Do you recall who was on that call?

25 A It was myself from -- from UVA was myself, Mark

SHARON KRUEGER - DIRECT

2767

1 Crowell, and Phil Parrish, another colleague and the Vice  
2 President for Research Office, and he's our Tobacco  
3 Commission liaison.

4 Q And did you actually take handwritten notes during  
5 this call as well?

6 A Yes, I did.

7 MR. FAULCONER: Your Honor, we'd offer -- sorry.  
8 Show the witness for identification what's been marked as  
9 269.

10 Now, if we can flip to the second page of this  
11 document, and then to the third page.

12 BY MR. FAULCONER:

13 Q Are these handwritten notes that you took on an  
14 e-mail and then the back of the e-mail for this call?

15 A Yes, they are.

16 MR. FAULCONER: Your Honor, we'd offer into  
17 evidence Exhibit 269.

18 THE COURT: It will be admitted.

19 MR. FAULCONER: Now, if we could go to the  
20 second page of this document.

21 BY MR. FAULCONER:

22 Q Do you see about two-thirds of the way down where you  
23 say, "Consider grant process by gov"? Do you know what  
24 "gov" is referring to there?

25 A I have -- I have read this over and over again, and

SHARON KRUEGER - DIRECT

2768

1 based on my other abbreviations from Governor, that's the  
2 only thing I can think of that I wrote down was that "gov"  
3 meant Governor.

4 Q All right.

5 MR. FAULCONER: Well, zooming back out and going  
6 to the second page. Sorry. I guess I meant third.

7 BY MR. FAULCONER:

8 Q Looking on the portion, sort of the upper right-hand  
9 corner that's between those lines, can you read for us  
10 what you wrote there?

11 A "Let McDonnell know about Tobacco Commission  
12 proposal. Look favorable on Commonwealth.  
13 Proof-of-concept funds."

14 Q Can you explain -- can you sort of decode that for  
15 us? What are you --

16 A So that was just a little note to myself that if we  
17 would decide to go ahead with a proposal, that their  
18 current -- at that time, there was an initiative worked on  
19 by many different universities to create a  
20 proof-of-concept research fund. And so just doing some  
21 internal thinking, you know, I was trying to maybe connect  
22 the two.

23 Q And when you say, "Let McDonnell know about Tobacco  
24 Commission proposal," what are you contemplating doing  
25 there?

SHARON KRUEGER - DIRECT

2769

1 A That would be probably -- well, it wouldn't be me  
2 letting him know. It would be probably the Vice President  
3 for Research.

4 Q And when you say, "Favorable on Commonwealth POC  
5 funds," is that referring to Star or an entirely  
6 separate --

7 A Oh, this is entirely separate.

8 Q Now --

9 MR. BROWNLEE: We can go ahead and take that  
10 down.

11 BY MR. FAULCONER:

12 Q Now, as you sort of did your due diligence and you  
13 were participating in these calls with Dr. Lazo and Star  
14 and Rock Creek, did you also brief one of the individuals  
15 I think we've referenced named Tom Skalak?

16 A Only one.

17 Q And does Mr. Skalak, to your knowledge, interact with  
18 government officials in his job?

19 A Yes, he does.

20 Q Now, before you briefed Mr. Skalak, did you put  
21 together a list of pros and cons in your -- as part of  
22 your due diligence?

23 A So that was a document I created just for myself.  
24 When you -- when -- personally, when I'm wrestling with  
25 making some decisions, it's easier if I write down pros

SHARON KRUEGER - DIRECT

2770

1 and cons. So it was a document I created for myself, to  
2 be seen by no one except myself. And yes, I did.

3 MR. FAULCONER: I'd like to show the witness  
4 what's been marked for identification as Exhibit 267.

5 BY MR. FAULCONER:

6 Q And is that the pros/cons list that you created?

7 A Yes, it is.

8 MR. FAULCONER: Your Honor, we'd offer Exhibit  
9 267 into evidence.

10 THE COURT: It will be admitted.

11 BY MR. FAULCONER:

12 Q All right. Now, we won't be long on this, but could  
13 you just read for us the first thing that's listed in the  
14 "Pro" column there?

15 A "Perception to Governor that UVA would like to work  
16 with local companies to support future economic  
17 development."

18 MR. FAULCONER: And if we could scroll over to  
19 the right.

20 BY MR. FAULCONER:

21 Q What is the first thing written in the "Cons" column?

22 A "Political pressure from Governor and impact on  
23 future UVA requests from the Governor."

24 Q All right.

25 MR. FAULCONER: We can go ahead and take that

1 down.

2 BY MR. FAULCONER:

3 Q Now, we've talked a lot about the process that  
4 unfolded. In the end, did the UVA researchers end up  
5 making any applications to the Tobacco Commission?

6 A No, they did not.

7 Q At the time of your various deliberations and due  
8 diligence and these conversations, did you have any  
9 knowledge of any payments or things of value given from  
10 Mr. Williams to the McDonnellls?

11 MR. BROWNLEE: Objection, Your Honor.

12 THE COURT: Overruled.

13 A No, I did not.

14 MR. FAULCONER: One moment, Your Honor.

15 (Counsel conferring with co-counsel.)

16 MR. FAULCONER: No further questions, Your  
17 Honor.

18 THE COURT: All right. Cross?

19 **CROSS-EXAMINATION**

20 BY MR. BROWNLEE:

21 Q Good afternoon, Ms. Krueger. My name is John  
22 Brownlee, and I represent Bob McDonnell. I've got a few  
23 questions for you here today. Thank you.

24 MR. BROWNLEE: If we can begin with 267,  
25 Government's Exhibit 267.

SHARON KRUEGER - CROSS - BROWNLEE

2772

1 BY MR. BROWNLEE:

2 Q This is this pros and cons that you've testified you  
3 prepared. Now, government counsel asked you, on the cons,  
4 it says, "Political pressure from Governor and impact on  
5 future UVA requests from Governor."

6 You never spoke with Bob McDonnell about Star or Rock  
7 Creek; isn't that correct?

8 A That is correct.

9 Q Okay. So whatever you're referring to here, it  
10 didn't come from this man, right?

11 A That is correct.

12 Q Okay.

13 MR. BROWNLEE: All right. You can take that  
14 down.

15 BY MR. BROWNLEE:

16 Q Now, I want to start back one step as we begin here.

17 MR. BROWNLEE: If we could pull up -- well,  
18 let's take a look at Government's Exhibit Number 261.

19 BY MR. BROWNLEE:

20 Q All right. And I believe the government showed this  
21 e-mail to you. Do you remember that?

22 A Yes.

23 Q Okay. So this is an e-mail, we'll start at the  
24 bottom, from you to Mr. Crowell on November 8th. And this  
25 is at 8:17 p.m. Okay?

1 A Yes.

2 Q And you're saying, "So got more information.

3 Interesting. I'm going to be" -- "I'm going to do a bit  
4 of diligence as well. Let you know what I find out." And  
5 then you talk about the governor's wife and all this.

6 Now -- and then you forwarded it up and it says,

7 "Great reports. Kind of agree on the Rock Creek thing."

8 And this is what the government showed you; isn't  
9 that right?

10 A This is correct.

11 Q Okay. And they just showed it to you just a few  
12 moments ago?

13 A This is correct.

14 Q Okay.

15 MR. BROWNLEE: Let's pull up Government's  
16 Exhibit 260.

17 MR. FAULCONER: Your Honor, I don't think this  
18 one has been entered.

19 MR. BROWNLEE: If we could just show the  
20 witness. If we'd go down below.

21 BY MR. BROWNLEE:

22 Q Okay. Now, this is an e-mail that has got your name  
23 on it that was sent to you. You're in the cc block, from  
24 Mr. Crowell; isn't that correct?

25 A Yes.

SHARON KRUEGER - CROSS - BROWNLEE

2774

1 Q Okay. And it's on November 8th?

2 A Yes.

3 Q Same date as the other one, except this one is at  
4 5:04 a.m., correct?

5 A Correct.

6 MR. BROWNLEE: Your Honor, we move Government's  
7 Exhibit 261 -- 261 -- 260 into evidence.

8 THE COURT: It will be admitted.

9 MR. BROWNLEE: Thank you.

10 Okay. Now, if we scroll up.

11 BY MR. BROWNLEE:

12 Q The e-mail that sets up the one that was shown to you  
13 by government counsel is from Mr. Wright. And who is  
14 Mr. Wright?

15 A He is from Rock Creek Pharmaceuticals.

16 Q So he's a Star guy?

17 A Yes.

18 Q Okay. And he sends this e-mail, and you're on it.  
19 And it says, "We do not know yet. It is one of the  
20 following three." And then it has three people,  
21 "Assistant to the Governor, Attorney General, wife of  
22 Governor. I will try to find out more."

23 Now, this is who Star is telling you might show up at  
24 some meeting?

25 A That is correct.

SHARON KRUEGER - CROSS - BROWNLEE

2775

1 Q Okay. And Bob McDonnell is not on this e-mail,  
2 right?

3 A That is --

4 Q No one from the government is on this e-mail?

5 A That is correct.

6 Q Okay.

7 MR. BROWNLEE: And then it scrolls up.

8 BY MR. BROWNLEE:

9 Q Okay. And then Wriston responds, and you're cc'd.  
10 And then it says, "Mark, I will call Peggy and see what  
11 are the compelling time-related issues she sees at this  
12 point."

13 Now, Peggy is Peggy Shupnik; is that correct?

14 A That is correct.

15 Q And Ms. Shupnik, if you know, attended this Star  
16 event at Gibson Island in July; isn't that right?

17 A That is right.

18 Q Okay. And so when she went to Gibson Island, she got  
19 the full pitch from Star about Anatabloc; isn't that  
20 correct?

21 A That is correct.

22 Q Okay. And it was at that time, after that, that  
23 Ms. Shupnik decided that they would accept this \$25,000  
24 planning grant from Star; isn't that right?

25 MR. FAULCONER: Objection, Your Honor, as to

SHARON KRUEGER - CROSS - BROWNLEE

2776

1 what Ms. Shupnik decided.

2 THE COURT: Sustained.

3 BY MR. BROWNLEE:

4 Q Well, do you know when UVA, Ms. Shupnik, decided to  
5 accept this money from Star?

6 A No, I do not.

7 Q Okay. All right. So if we take this down and then  
8 bring up 261, Government's Exhibit 261, and we blow this  
9 up, this is a continuation of the e-mail I just showed  
10 you, right?

11 A That's correct.

12 Q Okay. Because those were starting in the morning,  
13 and now we're in the evening?

14 A Right.

15 Q Okay. And so this is a follow-on. And so when  
16 you're talking here about -- when you say, "I think  
17 involving the Governor's wife or assistant may look like  
18 the gov is influencing UVA," that information came from  
19 Star, didn't it?

20 A That is correct.

21 Q Okay.

22 MR. BROWNLEE: You can take that down.

23 Can we pull up Government's Exhibit 262? And go to  
24 the next page. If we could blow up that photograph.

25 BY MR. BROWNLEE:

SHARON KRUEGER - CROSS - BROWNLEE

2777

1 Q Now, Ms. Krueger -- am I pronouncing it right, by the  
2 way?

3 A Krueger.

4 Q Krueger. I apologize. Ms. Krueger, you testified  
5 that you -- at some point you decided to do some due  
6 diligence and you went on I think the Star website, or  
7 somewhere, and pulled this photograph?

8 A I pulled it off of Facebook.

9 Q Off the Facebook. Okay. And you said that in seeing  
10 this photograph, that influenced one of your later  
11 statements that you thought he supported this product; is  
12 that correct?

13 A That is correct.

14 Q Okay. Were you aware that this picture went through  
15 the channels in the Office of the Governor and was  
16 actually approved by staff to be released?

17 A No, I do not.

18 Q Okay. All right.

19 MR. BROWNLEE: We can take that down.

20 BY MR. BROWNLEE:

21 Q Now, I think you were -- you met with government  
22 counsel, I believe; is that correct?

23 A Yes.

24 Q Yes. Okay. And at some point you testified that you  
25 attended an event for a company called MicroAire; is that

1 correct?

2 A That's correct.

3 Q Okay. And tell us what that event was about.

4 A So MicroAire is a -- a small surgical supply company  
5 located in Charlottesville, Virginia. And in -- gosh, it  
6 was in the spring, and I can't remember the year, they  
7 actually moved to a much larger facility. And the  
8 Governor and his wife were at the grand opening at that  
9 facility.

10 Q All right.

11 MR. BROWNLEE: Let me show you, just for the  
12 witness, RM-0166-0001. No. 0166-0001. There you go. If  
13 you could blow that up.

14 BY MR. BROWNLEE:

15 Q Is this the event you're referring to?

16 A Yes, it is.

17 MR. BROWNLEE: All right. Your Honor, we move  
18 RM-0166 into evidence.

19 THE COURT: It will be admitted.

20 MR. BROWNLEE: Thank you.

21 If we could just publish this.

22 BY MR. BROWNLEE:

23 Q And so this is Governor McDonnell at MicroAire, and  
24 they are expanding and they make apparently -- I think you  
25 said surgical --

1 A Orthopaedic equipment.

2 Q Like saws and things?

3 A Yes.

4 Q Okay.

5 MR. BROWNLEE: You can take that down.

6 BY MR. BROWNLEE:

7 Q And one other thing. I won't pull it up again, but  
8 you -- in one of your notes, you say, "This is the awkward  
9 part as Governor McDonnell has publically announced his  
10 support for the parent company, Star Scientific."

11 And I think you testified one of the reasons you  
12 wrote that is because of the picture; is that right?

13 A That is correct.

14 Q But up to that point, you had never had a  
15 conversation with Bob McDonnell about Star or Rock Creek  
16 or any of that?

17 A That is correct.

18 Q Okay. You talked a little bit about your  
19 conversations with Dr. Lazo; is that correct?

20 A Yes.

21 Q Okay. And you mentioned something. You said his  
22 testimony was -- he asked you a question, and you said  
23 something about his testimony was different or something.  
24 What did you mean by that, "his testimony"?

25 A I guess I'm kind of unclear of -- was it the

SHARON KRUEGER - CROSS - BROWNLEE

2780

1 conversation John and I had? John Lazo and I had are you  
2 talking about?

3 Q No, ma'am. You just referenced Dr. Lazo's testimony.  
4 And I was just wondering --

5 A Oh. Oh. He -- just following the trial, the media  
6 portrayal on the trial.

7 Q I see.

8 A It was mentioned that John spoke to a senior  
9 researcher official at the university on his drive home.

10 Q I see.

11 A And I don't think that he meant me.

12 Q Okay. All right. And so -- I just wanted to make  
13 sure. So when you referenced his testimony, you're just  
14 following the press accounts?

15 A Yes.

16 Q Okay. Now, counsel asked you about Dr. Lazo and some  
17 of his thoughts on these research principles. I believe  
18 you have some reference to that in your notes; is that  
19 correct?

20 A Yes.

21 Q Okay. Were you aware that Dr. Lazo has testified --  
22 you obviously know that, correct?

23 A Yes.

24 Q And he was asked whether or not Bob McDonnell -- if  
25 there's anything Bob McDonnell had done that would have

SHARON KRUEGER - CROSS - BROWNLEE

2781

1 violated any of those principles?

2 MR. FAULCONER: Objection, Your Honor, as to  
3 commenting on Dr. Lazo's testimony.

4 THE COURT: Sustained.

5 BY MR. BROWNLEE:

6 Q All right. And in those notes, in your conversations  
7 with Dr. Lazo, would you agree that Dr. Lazo's in court,  
8 under oath testimony is a better reflection of what he  
9 actually saw and said than your notes of a conversation  
10 you had with him?

11 MR. FAULCONER: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. BROWNLEE: Thank you, Your Honor.

14 BY MR. BROWNLEE:

15 Q Now, you testified that Star, or Rock Creek, never  
16 actually responded or got back to you guys about applying  
17 for any of these tobacco grants; is that correct?

18 A That is correct.

19 Q Okay. So there was some discussions. I think you  
20 had a phone call with some of the folks at Star, and then  
21 after that, nothing ever happened?

22 A The day after the call, I was sent, and maybe Mark  
23 Crowell was cc'd on it, just a follow-up, scientific  
24 journal article and a poster from a research presentation  
25 from Rock Creek. And then that was it.

SHARON KRUEGER - CROSS - BROWNLEE

2782

1 Q That was it. And did you ever have any conversations  
2 with Bob McDonnell about Rock Creek or Anatabloc or  
3 anything?

4 A No, I did not.

5 Q Okay. So fair to say that all this -- these e-mails  
6 and notes and all -- all of it comes from someone else  
7 other than Bob McDonnell?

8 A That is correct.

9 Q Okay.

10 MR. BROWNLEE: And let me just do one last  
11 thing, Your Honor, and I'm just about done.

12 Can you pull up Government's Exhibit 268 and just  
13 look at the far two left, the left-hand side.

14 BY MR. BROWNLEE:

15 Q It's kind of hard to see, but I think the first one,  
16 it says, "Date Letter Received." One of them says  
17 August 1. Number 2 says August 11th. Number 3 says  
18 August 15th. Number 4 says August 17th. Number 5 says  
19 August 18th maybe.

20 MR. BROWNLEE: If you'll go down.

21 BY MR. BROWNLEE:

22 Q Then 6 is August 18th. The 7th is the 19th.

23 Are those accurate dates, ma'am?

24 A So I -- you know, this is a document that's created  
25 by our Office of Sponsored Programs. So I never saw the

SHARON KRUEGER - CROSS - BROWNLEE

2783

1 request for proposals. So this is how they track either  
2 when letters were submitted or funding was granted. But I  
3 never -- I wasn't aware of anything at this time, in  
4 August.

5 Q Okay.

6 MR. BROWNLEE: You can take that down.

7 BY MR. BROWNLEE:

8 Q And then lastly, they asked you about some event in  
9 May of 2013 with the Governor of Nebraska.

10 A Yes.

11 Q Okay. Did that event have anything to do with Star  
12 or --

13 A No. No. No. That did not.

14 Q Okay. And I believe at that event Secretary Cheng  
15 attended?

16 A Yes, he did.

17 Q Okay. And has Governor McDonnell, in prior times,  
18 attended those types of events at Virginia?

19 A Yes.

20 Q Okay. So he has --

21 A Yes.

22 Q He has, I guess, positively responded to your  
23 invitations on occasion?

24 A Not necessarily mine, but the -- from the Office of  
25 the Vice President for Research. Yes.

1 Q Okay. Good. All right.

2 MR. BROWNLEE: Thank you, Judge.

3 THE COURT: All right. Ms. McDonnell.

4 **CROSS-EXAMINATION**

5 BY MR. KOFFMANN:

6 Q Good afternoon, Ms. Krueger. My name is Dan  
7 Koffmann, and I'm an attorney for Maureen McDonnell.

8 Ms. Krueger, you testified -- you were shown a  
9 picture by Mr. Brownlee of you at a -- or Governor  
10 McDonnell at a MicroAire event?

11 A Correct.

12 Q And you attended that event, right?

13 A Yes.

14 Q To your knowledge, did Maureen McDonnell attend that  
15 event?

16 A Yes, she did.

17 Q And did you have an opportunity to speak with her at  
18 that event?

19 A No, I did not.

20 Q Have you ever had an opportunity to speak with  
21 Ms. McDonnell?

22 A No, I have not.

23 Q So Maureen McDonnell has never pressured you to do  
24 anything?

25 A No, she has not.

**SHARON KRUEGER - REDIRECT**

2785

1 Q And she's never even spoken to you about Anatabloc?

2 MR. FAULCONER: Objection, Your Honor. Asked  
3 and answered.

4 THE COURT: Overruled.

5 A That is correct.

6 MR. KOFFMANN: Thank you.

7 THE COURT: Any redirect?

8 MR. FAULCONER: Very briefly, Your Honor.

9 **REDIRECT EXAMINATION**

10 BY MR. FAULCONER:

11 Q Ms. Krueger, you were shown the dates on that -- on  
12 that form --

13 A Yes.

14 Q -- that originally was sent to you.

15 As of the time that you were on the conference call  
16 in late November 2011 talking about the potential  
17 applications to the Tobacco Commission, was it your  
18 understanding that that application had already been made  
19 to the Tobacco Commission or that that was something that  
20 was being considered?

21 A So this actually was an exploratory call to discuss  
22 the early opportunity of -- or to discuss potentially  
23 putting in a Tobacco Commission grant.

24 Q So those dates on the form, are those referring to  
25 the planning grants or to the Tobacco Commission grants?

JERRY KILGORE - DIRECT

2786

1 A Those are referring to the pilot study grants.

2 MR. FAULCONER: One moment, Your Honor.

3 No further questions, Your Honor.

4 THE COURT: All right.

5 Thank you, ma'am. You may stand down.

6 (Witness stood aside.)

7 THE COURT: Call your next witness, please.

8 MR. DRY: The United States calls Jerry Kilgore  
9 to the stand, Your Honor.

10 **JERRY KILGORE,**

11 called as a witness by and on behalf of the government,  
12 having been first duly sworn by the Clerk, was examined  
13 and testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. DRY:

16 Q Mr. Kilgore, can you state your full name for the  
17 record, sir.

18 A Yes. Jerry W. Kilgore.

19 Q And what city and state do you currently live in?

20 A I live in Glen Allen, Virginia.

21 Q And how are you currently employed?

22 A I work at McGuireWoods Consulting.

23 Q And what is McGuireWoods Consulting?

24 A It's a -- it's a lobbying firm, for lack of a better  
25 description.

1 Q Okay. And how long have you been with McGuireWoods  
2 Consulting?

3 A For five years.

4 Q And specifically, what do you do at McGuireWoods  
5 Consulting?

6 A I co-chair the National Practice Team, which is the  
7 team that goes out and -- and works with state Attorneys  
8 General and state Governors.

9 Q Okay. And who are you interacting with these state  
10 Governors and state Attorney Generals on behalf?

11 A On behalf -- business clients, usually.

12 Q Okay. So business clients hire you to do what?

13 A They hire me to -- to go to meetings with state AGs  
14 or governors and work on their issues, whether it's  
15 consumer protection issues or -- or just dealing with  
16 various investigations by state Attorneys General. So  
17 just a whole gamut of things.

18 Q And when did you first meet Mr. McDonnell?

19 A It would have been in '93, '93 when I was working  
20 with the George Allen campaign, but then became Secretary  
21 of Public Safety for then Governor George Allen in January  
22 '94.

23 Q Okay. I'm sorry. Who was Secretary of Public  
24 Safety?

25 A I was Secretary of Public Safety, and became

JERRY KILGORE - DIRECT

2788

1 Secretary of Public Safety in January of 1994.

2 Q Okay. And that was in whose administration?

3 A Governor George Allen.

4 Q Since the time you met him, how would you describe  
5 your personal relationship with -- or your relationship  
6 with Mr. McDonnell?

7 A Right. It was, you know, a political relationship.

8 He was a member of the General Assembly on the Courts of  
9 Justice Committee, which was the committee that the  
10 Secretary of Public Safety had to deal with and get  
11 legislation passed out of. He handled a lot of our  
12 legislation from -- from the Governor Allen administration  
13 on pro abolition, juvenile justice reform.

14 And then over time, you know, I would say we became  
15 personal friends. He ran for -- after I served as  
16 Attorney General, he ran for Attorney General with me  
17 running for Governor on the same ticket.

18 Q Okay. And let's just unpack that a little bit. When  
19 did you run for Attorney General of Virginia?

20 A I ran twice, actually. First in 1997, in a four-way  
21 primary, and I didn't quite make it then. And then I won  
22 in 2001 and started service in January of 2002.

23 Q And during your campaign for Attorney General, did  
24 you use private airplanes of political donors?

25 A When we could. Yes.

1 Q Okay.

2 A It made it easier to get to Southwest Virginia or  
3 other areas of the state.

4 Q Okay. And was Mr. Williams one of your political  
5 contributors?

6 A Yes.

7 Q And you rode on his plane?

8 A Yes.

9 Q When did you first meet Mr. Williams?

10 A It would have been during the Attorney General's  
11 campaign.

12 Q And what was the context of your meeting him?

13 A He was a political supporter.

14 Q Okay. And what did you know about Mr. Williams at  
15 that time?

16 A Just that it was Star Tobacco at the time, Star  
17 moving into Star Scientific, and that he was one of the  
18 independent tobacco marketers, if you will, in Southside  
19 Virginia.

20 Q When you say "independent," what does that mean?

21 A Well, it's not one of the big five, like Philip  
22 Morris and some of those. But one of the more independent  
23 tobacco manufacturers and growers in Southside Virginia.

24 Q And how would you describe your relationship with  
25 Mr. Williams during your campaign for Attorney General?

JERRY KILGORE - DIRECT

2790

1 A It would -- it would have been political supporter.

2 Candidate, political supporter.

3 Q Okay. And did Mr. Williams ever donate actual money  
4 to your campaign for Attorney General?

5 A Yes. I believe so.

6 Q And were these all in the context of campaign  
7 contributions?

8 A Yes.

9 Q Okay. Did you ever receive any personal money or  
10 loans from Mr. Williams while you were running for  
11 Attorney General?

12 A No.

13 Q Okay. And when did you serve as Attorney General of  
14 Virginia?

15 A From 2002, January 2002, until the beginning of 2005.

16 Q And during that time, how would you describe your  
17 relationship with Mr. Williams?

18 A Political supporter, candidate for Governor then, you  
19 know, running for Governor during some of that time.

20 Q And while you were Attorney General, did you receive  
21 any personal loans or money from Mr. Williams?

22 A No.

23 Q Did he ever offer you any?

24 A No.

25 Q Now, you stepped down as Attorney General in 2005, I

1 believe you said?

2 A Correct.

3 Q And what did you do after you stepped down from your  
4 role as Attorney General?

5 A Unfortunately, I ran for Governor.

6 Q Okay. And while you were running for Governor, I  
7 believe -- you alluded to this. I just want to make sure  
8 I'm clear on it.

9 Who was also running on your ticket, I guess?

10 A Governor McDonnell was running for Attorney General.

11 Q And did you make joint campaign appearances with  
12 Mr. McDonnell, who was running for Attorney General?

13 A Oh, yes. Absolutely. Plenty of those.

14 Q Okay. And what's your relationship like with  
15 Mr. McDonnell at that point?

16 A I -- I would say personal friend, political ally.  
17 All of the above.

18 Q Now, did Mr. Williams ever make campaign  
19 contributions for your campaign for Governor?

20 A Yes.

21 Q And do you have any idea how much those would be?  
22 Was he the largest contributor?

23 A He wasn't the largest, but I would say he and Star  
24 together were probably around \$100,000.

25 Q Okay. And at the time you're running -- I'm sorry.

JERRY KILGORE - DIRECT

2792

1 I know this is going to be painful, but I'll ask. What  
2 were the results of your race for Governor?

3 A I did not win.

4 Q And what were the results of Mr. McDonnell's race for  
5 Attorney General?

6 A He did win.

7 Q Okay. Now, after -- and that was in 2005, I believe?

8 A Correct.

9 Q After that, where do you go next?

10 A I went to Williams Mullen and basically did the same  
11 thing there that I'm doing at McGuireWoods.

12 Q You were a lobbyist?

13 A I was a lobbyist.

14 Q And then --

15 A And attorney. Sort of a mix, a hybrid there.

16 Q Okay. And then when did you -- what year did you go  
17 to McGuireWoods?

18 A I went to McGuireWoods in -- in January 2010.

19 Q Okay. Now, in 2009, Mr. McDonnell is running for  
20 Governor; is that right?

21 A Correct.

22 Q Did you assist in his campaign?

23 A Yes. I was on the Finance Committee.

24 Q And what do you do -- what was your role as being on  
25 the Finance -- first of all, can you explain what a

1 Finance Committee does?

2 A Finance Committee is a group of people that assist a  
3 candidate in raising money for their race.

4 Q When you say "raising money," what is that?

5 A Contacting donors, contacting businesses that might  
6 contribute to a candidate and bringing those dollars in  
7 for the campaign to be used on advertisements and -- and  
8 campaign expenses.

9 Q All right. Can you distinguish between a campaign  
10 contribution and somebody giving personal money?

11 A Well, I mean, a campaign contribution is to be used  
12 solely for that campaign. You know, expenses of the  
13 campaign, like you have staff or you -- you want to save  
14 as much money as possible to -- to buy those ads at the  
15 end, in September and October, that go on TV or the radio  
16 and things like that.

17 Personal would just be outside of the campaign. It  
18 would have nothing to do with the campaign.

19 Q Okay. And you mentioned briefly what a campaign  
20 contribution is. Can you describe what an in-kind  
21 contribution is?

22 A That would be a contribution of services, whether  
23 it's a plane. You mentioned that earlier. It could be an  
24 in-kind. Somebody giving you an office space, buying --  
25 buying dinners for -- for everybody at an event or

1 something. Those could be in-kind. You just put the  
2 value, to the best of your ability, down on the campaign  
3 finance report and report it.

4 Q Okay. And you mentioned a "campaign finance report."  
5 If somebody makes a campaign donation, how is that tracked  
6 and reported?

7 A Well, you -- you're obligated, under state law, to  
8 file with the State Board of Elections every so often,  
9 every -- you know, and it gets shorter and shorter as your  
10 race is getting shorter and shorter in days. So you may  
11 start out reporting every six months, and then you'll file  
12 reports every 30 days. And then at the end, you're filing  
13 them every ten days, and then maybe every day if you get  
14 large enough donations.

15 Q And are you reporting just money in or are you  
16 required to report money out?

17 A You're reporting money in and money out. You're  
18 reporting the money you've raised and the expenditures  
19 you've made.

20 Q Okay. So during the Governor's -- Mr. McDonnell's  
21 campaign for Governor in 2009, how would you describe your  
22 relationship with Mr. McDonnell at this point?

23 A Great relationship. Just working to raise the  
24 dollars necessary to be competitive.

25 Q Okay. And you're out of politics at this point --

1 A I'm --

2 Q -- as a candidate?

3 A As a candidate for sure. Yes.

4 Q Okay. And how is -- what's your relationship with  
5 Mr. Williams like at this point?

6 A I mean, just, you know, good. I mean, it's a -- he's  
7 a political person. He's a donor I would call to -- to  
8 raise money for candidates.

9 Q Okay. Now, when do you first start having a business  
10 relationship with Mr. Williams?

11 A In -- during the summer of 2011.

12 Q Okay. So this is after Mr. McDonnell has been  
13 elected Governor?

14 A Correct.

15 Q And you've worked on his campaign committee, or  
16 his --

17 A Finance.

18 Q -- Finance Committee?

19 A Correct.

20 Q Was there any other committee after he won the  
21 election that you worked on?

22 A Yes. The Higher Education Board Appointments  
23 Committee. I worked on that with the Governor and his  
24 staff.

25 Q How about the Inaugural Committee?

JERRY KILGORE - DIRECT

2796

1 A Yes. I'm sorry. Yes, I did. I worked on -- I was  
2 the co-chair of the inauguration.

3 Q Okay. Now, going to -- I believe you said the summer  
4 of 2011, you started having a business relationship with  
5 Mr. Williams. Can you -- just tell us, how did that come  
6 about?

7 A He called me in the summer of 2011, July time frame,  
8 and asked me to meet him for lunch in town, and we met for  
9 lunch. And he wanted to talk about getting research  
10 dollars from the State for his product.

11 Q And what product was that?

12 A Anatabloc. And he, you know, was describing  
13 anatabine and all that -- the good it could do. And he  
14 needed it researched in Virginia, and he thought I and the  
15 consulting firm would be the place to go to make sure that  
16 we helped him get the research dollars through -- he  
17 mentioned first the Tobacco Commission and --

18 Q Okay. So he brought that up in that meeting?

19 A He brought up the Tobacco Commission, going after  
20 Tobacco Commission funding for this research. And I  
21 brought up that, you know, you should look broadly at  
22 state government for research dollars, that, you know,  
23 just don't rely on the Tobacco Commission. You should  
24 look at other ways to get those dollars, whether through  
25 the budget or through grants. And you just got to look at

JERRY KILGORE - DIRECT

2797

1 all of state government to figure out if there are  
2 research dollars out there.

3 Q And when you mention "the budget," what exactly are  
4 you discussing with him about potential funding sources?

5 A Well, when I'm -- when I mention the budget, I mean  
6 the biannual budget that the Commonwealth passes every two  
7 years, but it amends every year. So it's like dealing  
8 with a budget every year, technically.

9 And you try to, on behalf of clients, get support  
10 for, if you will, a line item in the budget for particular  
11 research or for a particular product or for a particular  
12 item.

13 Q Okay. And this meeting was July 6th of 2011; is that  
14 right?

15 A That sounds right. Correct.

16 Q What did Mr. Williams tell you during this meeting  
17 regarding his relationship with Mr. McDonnell?

18 A During that meeting, he did say that the Governor and  
19 the First Lady both supported his product and supported --  
20 would support getting research on his product.

21 Q And did he mention their support for state funding  
22 for the research?

23 A He mentioned that they would be supportive of that,  
24 yes.

25 Q Now, was anyone else present during your meeting with

1 Mr. Williams on July 6th?

2 A No.

3 Q It was just you and he?

4 A Just the two of us.

5 Q Now, can you kind of -- first of all, were you aware  
6 of the process -- he mentions the Virginia Tobacco  
7 Commission, right? Were you aware of the process of the  
8 Virginia Tobacco Commission?

9 A Yes. I mean, for the most part, I'm aware of the  
10 Virginia Tobacco Commission process. But I do know they  
11 have deadlines and they have specific funding cycles, you  
12 know, whether it's research cycle or other types of  
13 cycles. They have defined cycles at the Tobacco  
14 Commission.

15 Q And can you just briefly describe what the Virginia  
16 Tobacco Commission is?

17 A It was -- the Virginia Tobacco Commission was  
18 established by the large -- what we call the master  
19 settlement agreement with the five large tobacco companies  
20 back before I was AG that sends a stream of money into  
21 each state that was -- into each state, now all 50 states.  
22 But Virginia chose to use their stream of dollars in two  
23 ways. One would be to give 90 percent of those dollars to  
24 the Tobacco Commission to give out through grants to  
25 regions of the Commonwealth that grew tobacco to diversify

1 those economies and to make sure they are no longer  
2 tobacco dependent.

3 The other 10 percent goes to the Virginia Healthy  
4 Youth Foundation to deal with anti-smoking campaigns.

5 Q Okay. And who serves as commissioners?

6 A The -- it's a 31-member committee -- commission. You  
7 would have -- members of the House and the Senate would  
8 probably be -- I think 11 of those members are -- 11 or 12  
9 are members from the House and the Senate. The rest are  
10 appointed by the Governor or the Governor's designates.

11 Q Okay. And, in fact, do you have a family relation  
12 that works on --

13 A Yes, I do.

14 Q -- that?

15 A My brother is the Chairman. He's in the House of  
16 Delegates, and he's the Chairman of the Tobacco Commission  
17 at this point.

18 Q And to be clear, the Governor didn't appoint him to  
19 the Tobacco Commission? That's --

20 A No. He's appointed by the House of Delegates. And  
21 the House and the Senate have to appoint members from  
22 those tobacco growing areas. So since he represents  
23 the -- the far western corner of state, then he represents  
24 the Burley tobacco area.

25 Q Okay. Now, as a result of your meeting on July 6

JERRY KILGORE - DIRECT

2800

1 with Mr. Williams, what resulted? What was your  
2 relationship? He had been a political donor. Now what is  
3 he?

4 A He became a client.

5 Q All right.

6 A So I just go back and --

7 Q Yeah.

8 A -- talk with my staff, mainly Chris Nolen, in my  
9 office to, "Let's come up with a plan, how do you want to  
10 deal with" -- "how do we want to deal with approaching the  
11 Tobacco Commission and looking for other funding sources."  
12 And I immediately said, "Well, I better call and see if  
13 there's a deadline coming up."

14 So I called my brother to see if there was a deadline  
15 coming up, and there was one coming up for research. And  
16 it was coming up in August.

17 Q Okay. You just mentioned "research." Could the  
18 Virginia Tobacco Commission use Tobacco Commission funds  
19 for research?

20 A Yes, they could. And they have a cycle for research  
21 and development. And that's the cycle I'm referring to  
22 that was going to come up in August, in the August time  
23 frame of 2011.

24 Q Okay. And that cycle, the August time frame, is that  
25 for the pre-applications for the final application?

JERRY KILGORE - DIRECT

2801

1 A That's for the application.

2 Q Okay. Were you able to make that August deadline as  
3 far as submitting grants applications?

4 A No, we did not. We were working with Bob Pokusa, who  
5 is the general counsel, at the time, at Star, and we were  
6 pushing them, "If you're going to do this, we've got  
7 to" -- "if you're going to do it for this cycle, we've got  
8 to it quickly. We've got to get all of our information  
9 together."

10 And we had some problems with how they wanted to do  
11 it because Mr. Williams had suggested that the partnership  
12 needed to be with Johns Hopkins, and I totally advised  
13 against that because I did not believe that -- that the --  
14 this Tobacco Commission would partner with a University of  
15 Maryland.

16 Q So what did you recommend that he do?

17 A I told him you have to get a Virginia research  
18 institution to deal with this. And we suggested VCU or  
19 UVA, to go for research folks at those facilities because  
20 that would make it more palatable to the Commission.

21 Q And just so I'm clear. Why is it going to be more  
22 palatable to have UVA or VCU rather than Johns Hopkins?

23 A Because they are in the Commonwealth of Virginia.  
24 And this money, the commissioners would -- I'm convinced  
25 the Commission likes to spend money on Virginia projects,

JERRY KILGORE - DIRECT

2802

1 not see Marylanders getting the money.

2 Q And did you mention that to Mr. Williams?

3 A Mr. Pokusa.

4 Q Mr. Pokusa?

5 A Yes.

6 Q And did Mr. Williams, in your conversations with him,  
7 did he agree, "All right. UVA and VCU sounds great"?

8 A Eventually, yes. They -- they all agreed that we  
9 should be focusing on UVA and VCU.

10 Q Now, in July of 2011, were you aware -- after your  
11 meeting with Mr. Williams, were you aware that Star  
12 Scientific was going to hold a conference at Gibson  
13 Island?

14 A Yes. I was invited to that conference originally by  
15 Mr. Williams. He said that I should go to the conference  
16 and learn more about Anatabloc and learn more about the  
17 benefits and hear the researchers talk about it.

18 And I was like, "Okay. I can go." And then  
19 Mr. Pokusa called me and told me I should not go. I did  
20 not need to go.

21 Q Okay. Were you excited about listening to more about  
22 Anatabloc?

23 A No. I was happy not to go, actually.

24 Q After the Gibson Island event, did you have any  
25 conversations with Mr. Williams about it?

JERRY KILGORE - DIRECT

2803

1 A After the Gibson Island?

2 Q Yep.

3 A Yes. At a lunch.

4 Q Okay. And what did Mr. Williams tell you regarding  
5 the Governor's support?

6 A That the Governor was very supportive of -- of  
7 Anatabloc and that the First Lady was attending -- going  
8 to attend the Gibson Island.

9 Q And did you subsequently learn that the First Lady  
10 didn't attend, but somebody else attended?

11 A I did learn that she did not attend, and that  
12 Ms. Sutherland, instead, attended for her.

13 Q Okay.

14 MR. DRY: I'd like to bring up Government's  
15 Exhibit 202, please.

16 BY MR. DRY:

17 Q Do you do you recognize this e-mail sir?

18 A Yes, I do.

19 Q And just to be clear, Mr. Nolen works for you?

20 A He works with me. I don't think he'd like me to say  
21 he works for me.

22 Q And this is to Bob Pokusa?

23 A Yes.

24 Q And you authorized Mr. Nolen to send this e-mail?

25 A Yes. We worked on this together.

JERRY KILGORE - DIRECT

2804

1 MR. DRY: Government moves for the admission of  
2 Government's Exhibit 202, please.

3 THE COURT: It will be admitted.

4 BY MR. DRY:

5 Q Sir, basically, what is the purpose of this e-mail?

6 A It's to outline for Mr. Pokusa the activities that we  
7 believe needs to be done to ensure that we have the  
8 opportunity to get research dollars for the testing of  
9 Anatabloc.

10 Q And there's an attachment with a memo?

11 A Yes. Correct.

12 MR. DRY: Can we go to the second page of this.

13 BY MR. DRY:

14 Q And did you and Mr. Nolen author this memo to Bob  
15 Pokusa?

16 A Yes, we did.

17 Q And at this point, to be clear, who's your primary  
18 point of contact at Star Scientific?

19 A At this point, it had become Mr. Pokusa only.

20 Q Okay. And Mr. Pokusa was what?

21 A He was the general counsel.

22 Q Okay. And can you -- what's the subject line of  
23 this?

24 A It's the "Draft Timeline of Activities to Obtain  
25 Tobacco Indemnification and Community Revitalization

JERRY KILGORE - DIRECT

2805

1 Commission, TICRC, Grant Funds."

2 Q And going to the second paragraph, you talk about, "A  
3 pivotal aspect of the proposed activities is to know the  
4 decision-making process at UVA to pursue grants of this  
5 nature."

6 Walk us through what had to happen before you could  
7 make an application to the Tobacco Commission.

8 A Well, the Tobacco Commission rarely would give a  
9 grant to a private entity. I mean, it would -- it's just  
10 rare. I mean, they prefer to have localities or  
11 universities, someone with a governmental function to  
12 apply for those grants on behalf of a company.

13 And that's why we were pushing UVA or VCU, and at  
14 this -- and we wanted to understand -- because it wasn't  
15 part of our job to get -- to locate these researchers at  
16 UVA -- what is the decision-making process at UVA. "We  
17 need to know that, Bob, so that we can project a timeline  
18 with you."

19 Q Okay. Just so I understand. You're going to be  
20 responsible for putting together the grant application or  
21 submitting it to the Tobacco Commission, right? That's  
22 what McGuireWoods is hired to do?

23 A Yes. And working with the Commission staff and  
24 working with the commissioners, if we get that far.

25 Q But before that happens, what does UVA have to decide

JERRY KILGORE - DIRECT

2806

1 to do under this plan?

2 A They have to decide to be a partner with Star, and  
3 they have to decide to take the lead on applying with the  
4 Tobacco Commission.

5 Q Now, is part of your role to call the UVA  
6 administrators up or the scientists and start that  
7 process?

8 A This was not our role in this case. No.

9 Q Who was responsible for doing that?

10 A That was Star's role.

11 Q Okay. And on the third paragraph where it says,  
12 "Additionally, we think it is worth exploring whether the  
13 McDonnell Administration would consider allocating some  
14 additional funds to UVA's state appropriations for use as  
15 matching funds to leverage TICRC funds."

16 First of all, TICRC, that's the Tobacco Commission  
17 acronym?

18 A Correct.

19 Q Okay. Sometimes it's VTC for that?

20 A I have.

21 Q Okay. Now, what are you talking about "matching  
22 funds"?

23 A Well the Tobacco Commission, on their  
24 pre-application, their application, like to see others  
25 have skin in the game, if you will, to other entities to

JERRY KILGORE - DIRECT

2807

1 be supporting this as well. Whether it's the private  
2 entity or the locality or the other state entity, they  
3 like to know that others are supporting this project  
4 through some funding or through giving all the staff --  
5 you know, to quantify, if you will, that process.

6 Q Now, your next sentence you write, "We need to  
7 determine whether this is possible and if so, make the ask  
8 directly to the Governor."

9 Why did you want to make the ask directly to the  
10 Governor?

11 A So that it would be included in the Governor's budget  
12 or the budget amendments.

13 Q Going to the third page of this exhibit, sir, is this  
14 the draft timeline that you put together?

15 A Yes.

16 Q All right.

17 MR. DRY: Let's go to the first block.

18 BY MR. DRY:

19 Q In August, it says, "Determine extent of interested  
20 researchers/partners. Determine UVA internal approval  
21 process. Initiate UVA approval process."

22 Who's going to be doing that?

23 A The -- Star is supposed to do that.

24 Q Okay. And then going down, the September time  
25 frame -- and these are -- is it fair to say this is like a

JERRY KILGORE - DIRECT

2808

1 timeline proposal to your client where you're saying, hey,  
2 these are what needs to be checked off?

3 A Yes. This is our wish list of things we want Star to  
4 accomplish with us.

5 Q Okay. And then it talks about, "Prepare advocacy  
6 materials for use in meetings with government officials.  
7 Complete a pre-application. Schedule a meeting with  
8 Tobacco Commission staff. Initiate drafting of the  
9 application."

10 But this next bullet point, you have, "Schedule  
11 meeting with Governor McDonnell and Governor's policy  
12 staff," and you write "J. Williams and J. Kilgore required  
13 to request Governor to include state appropriation to UVA  
14 for specific research, which could be eligible for the  
15 match."

16 Why did you want -- I think we talked about why you  
17 wanted to have a meeting with Mr. McDonnell. Why did you  
18 want Mr. Williams to be at that meeting?

19 A Because generally, if you're making an ask for the  
20 state Budget, you want the principal in the room to ask  
21 the other principal, which would be the Governor, and to  
22 express why it's needed and what the background is.

23 I mean, I would submit that just having me in the  
24 room wouldn't possibly get the job done because we're --  
25 we're in the Governor's Office on so many other things.

JERRY KILGORE - DIRECT

2809

1 Q And did Mr. Williams express to you anything about  
2 the Governor's support of his product by this point?

3 A Yes. I mean, he had said that the Governor and First  
4 Lady strongly supported Anatabloc.

5 Q Now, at the time of this memorandum -- Mr. Williams  
6 has told you about the Governor's support. Did he tell  
7 you anything about taking the First Lady shopping in New  
8 York City?

9 A No.

10 Q And had he told you anything about writing a \$50,000  
11 check made payable to her?

12 A No.

13 Q Had he told you anything about paying \$15,000 for the  
14 Governor's daughter's wedding reception?

15 A No.

16 Q Anything about the Governor playing golf at Kinloch  
17 on his tab?

18 A No.

19 Q Now, have you known Mary-Shea Sutherland for a while?

20 A Yes.

21 Q Okay.

22 A I have.

23 Q I'd like to move to the meeting that you had. I  
24 believe it was at The Berkley Hotel on August 1st of 2011.  
25 Do you remember that meeting?

JERRY KILGORE - DIRECT

2810

1 A Yes.

2 Q Okay. And how did that come about?

3 A Originally scheduled by Mary-Shea as just a catch-up  
4 time. We do this occasionally to catch up with each  
5 other. She worked with me back in '94 through '97.

6 Q And in what context did Ms. Sutherland work with you?

7 A She was -- I was Secretary of Public Safety, and she  
8 worked in my inner office. And she was the grants  
9 administrator for the entire Secretary of Public Safety.

10 Q And did you know her while she was working at  
11 Benedetti & Farris in any context?

12 A Yes. I knew her as a fundraiser that I worked with  
13 on various campaigns.

14 Q Okay. Now, let's go to this Berkley Hotel meeting.  
15 You said it was originally scheduled, it was just going to  
16 be with Ms. Sutherland?

17 A Right.

18 Q It was kind of a typical thing, every now and then?

19 A Right.

20 Q Who else shows up at this meeting?

21 A Jonnie Williams.

22 Q And who -- it's Ms. Sutherland, Mr. Williams, and  
23 you. Anybody else at it?

24 A That's it.

25 Q Just walk me through what's discussed at this

1 meeting.

2 A Catching up first. But then, you know, Mary-Shea and  
3 Mr. Williams start talking about getting her a job and  
4 finding her another job because she's telling me she's  
5 totally unhappy at the Mansion and does not want to work  
6 for the First Lady anymore and wants a new job and wants  
7 out of there.

8 And immediately they bring up that she wants to go to  
9 work for Jonnie, and they are talking this back and forth.  
10 And Jonnie turns to me and asks me if -- if we would hire  
11 her at -- at McGuireWoods Consulting and make a place for  
12 her and he would find a way to -- to give her business.

13 And I'm like, "We just don't have a position like  
14 that that's open right now, and I'm not sure we're going  
15 into that area."

16 So then they started talking about other ways to make  
17 it happen. And they -- I think Mary-Shea -- Mary-Shea  
18 brought up, you know, going back to Benedetti & Farris,  
19 with Jonnie being a client of hers at Benedetti & Farris.

20 Q And what's -- what's Ms. Sutherland's demeanor as  
21 she's telling you that she's unhappy on the First Lady's  
22 staff?

23 A Oh, she's very emotional that day about her work at  
24 the Mansion.

25 Q Was it -- did she make it clear to you that she was

JERRY KILGORE - DIRECT

2812

1 leaving the Mansion no matter what?

2 A Oh, I left there thinking she was leaving the  
3 Mansion.

4 Q Okay. What did Mr. Williams say as you're -- as the  
5 meeting is discussing Ms. Sutherland's employment, what is  
6 Mr. Williams saying regarding whether he's going to hire  
7 her or not?

8 A Well, it seems to me like during that meeting, it's  
9 a -- a job negotiation lunch more than anything. Here I  
10 thought I was going to this lunch just to causally meet up  
11 with Mary-Shea, and it becomes a job negotiation lunch.

12 And he -- at the end of it, as we're leaving, he's  
13 asking her to get with Benedetti & Farris and put a  
14 proposal together. And then he says send it to me, which  
15 I didn't know I was going to be involved in that until  
16 that very moment, to send that proposal to me. And that's  
17 how we left that lunch. And then I got the proposal a few  
18 weeks -- or a week or so later. Two weeks later, I think.  
19 Two or so weeks later.

20 Q Okay. And --

21 A Maybe longer than that. I'm trying to -- longer than  
22 that.

23 Q Okay. And are they talking about salary at this  
24 meeting? When you say a job negotiation, are they sitting  
25 there saying, "This is what you've got to pay" or

1 anything?

2 A No. No. We did not get into that detail. But we  
3 got into, you know, she would work -- you know, her  
4 proposal was she would work for him. He would be a client  
5 of Benedetti & Farris.

6 Q Okay. And he says, "Send a proposal to Jerry  
7 Kilgore"?

8 A Correct.

9 Q Okay. And were you negotiating on behalf of  
10 Mr. Williams this proposal that came over later?

11 A No. I mean, I got the proposal from Abby Farris at  
12 Benedetti & Farris. And I've known her for a -- for  
13 almost my entire -- my entire political career. So, you  
14 know, Abby called me about it, sent it over. And I said,  
15 "Well, I'll just get it on to Mr. Williams." And so I  
16 tried to call him, tried to reach out to him several  
17 times, and actually never reached him about this  
18 particular contract. And -- or this proposal.

19 And they kept calling. Abby would call. And then I  
20 got a call from -- one day from Tom Benedetti. And I  
21 eventually talked with Chris Nolen, who also works with  
22 me, and we decided we best just ship that off to  
23 Mr. Pokusa and ask Mr. Pokusa, since he was general  
24 counsel to Star, and that's who would be using her, I  
25 would -- we thought. So just have Mr. Pokusa take care of

1 it.

2 Q Before you sent the proposal that you received from  
3 Benedetti & Farris to Mr. Pokusa, did you have any  
4 conversations with Mr. Williams about it?

5 A I tried to call him about it, but never really had a  
6 conversation or reached him about it.

7 Q But after you sent it to Mr. Pokusa, did you  
8 subsequently have a conversation with Mr. Williams about  
9 the proposal?

10 A Yes.

11 Q And tell us what happened then.

12 A That would have been in September of -- after we had  
13 sent it to Mr. Pokusa. And I asked Mr. Williams about it.  
14 I said, you know, "It was" -- "I thought, you know" -- I  
15 said, "I thought, you know, you all were going to hire  
16 her, and what happened?" He said he just could not hire  
17 her. It was poaching on the First Lady's Office, and he  
18 was not going to do that.

19 Q Did he explain why he didn't want to do that?

20 A He needed -- he told me he needed the support of the  
21 First Lady for his product and did not want to make her  
22 mad.

23 Q What did he ask you to do after that call?

24 A I didn't deal anything with that issue because I had  
25 already shipped it off to Pokusa.

JERRY KILGORE - DIRECT

2815

1 Q All right. Let's take a step back. Because that --  
2 I believe that was in September of 2011. Let's take a  
3 step back.

4 A Right.

5 Q At some point do you learn that there's going to be  
6 an event at the Mansion related to Anatabloc?

7 A Yes, I do.

8 Q How do you learn that?

9 A Well, I had -- I learned it from Mr. Eige and Mr. --  
10 and Martin Kent called me to come to a meeting at their  
11 office. And I went to the meeting. I had other business  
12 there as well, and I was glad to get a quick meeting. And  
13 they had major concerns about this launch that was going  
14 to happen at the Mansion.

15 MR. DRY: Can we bring up Government's Exhibit  
16 4, please.

17 BY MR. DRY:

18 Q Do you recognize this document, sir?

19 A Yes.

20 Q And this is basically a time sheet for you and  
21 Mr. Nolen at McGuireWoods?

22 A Correct.

23 MR. DRY: Government moves for Government's  
24 Exhibit 4 into evidence, Your Honor.

25 THE COURT: It will be admitted.

1 BY MR. DRY:

2 Q And just to be clear, how great of a timekeeper are  
3 you?

4 A Well, we normally -- on the consulting side, which is  
5 why I want to be on the consulting side, we don't have to  
6 do time sheets that are -- account for every tenth of an  
7 hour that the law firm has to do. And we generally don't  
8 do work on an hourly basis. We do work on a project basis  
9 or a monthly retainer basis.

10 Q So it's more of a -- either like a flat fee or --

11 A It is a -- it's a flat fee. That's how I would  
12 describe it.

13 Q Okay.

14 MR. DRY: Can we go down to August 12th of 2011.

15 BY MR. DRY:

16 Q And right there, it shows an hour -- or .9?

17 A Right.

18 Q Is that the length of time?

19 A Right.

20 Q And then that's how much it cost? Not to be rude.

21 A Yes.

22 Q Okay. And then here -- what are you referring to,  
23 "Discussions with C. Nolen on strategies at Tobacco  
24 Commission"? Do you recall what that --

25 A We -- Chris and I met before I went to this meeting.

JERRY KILGORE - DIRECT

2817

1 Q Okay. And then it says, "Meeting with J. Eige and M.  
2 Kent, Chief of Staff, regarding rollout issues"?

3 A Correct.

4 Q Do you recall Mr. Williams informing you of concerns  
5 by Eige and Kent before you had the meeting?

6 A Yes.

7 Q What did he tell you?

8 A That they were concerned about the launch of  
9 Anatabloc being at the Mansion, that they didn't want it  
10 at the Mansion.

11 Q And what did he tell you to do?

12 A He said, "Well, the First Lady and the Governor want  
13 it at the Mansion. So we're going to have it at the  
14 Mansion."

15 Q And did he ask you to reach out to Eige and Kent  
16 about this?

17 A They reached out to me.

18 Q Okay. And what did they tell you?

19 A They were opposed to having a launch at the Mansion,  
20 that it was -- they did not believe that it was  
21 appropriate to have this launch at the Mansion, that --  
22 and they suggested that any launch of the project be at  
23 the -- at the BioTech Park here in Richmond and not at the  
24 Mansion.

25 Q Did they --

1 A And they asked me to pass that back on to  
2 Mr. Williams.

3 Q Did they say anything about whether they were  
4 familiar with any other similar event like this?

5 A I mean, they just went on that we don't do those  
6 rollout -- we don't do announcements like that at the  
7 Mansion. We should not do those announcements at the  
8 Mansion.

9 Q And they ask you to talk to Mr. Williams. Do you?

10 A I do.

11 Q And what do you tell Mr. Williams?

12 A I told him that they did not want it at the Mansion  
13 and that, you know, he needed to look at the BioTech Park  
14 as a potential place to do a rollout.

15 Q And what was his reaction?

16 A His reaction was he didn't want to do that. He  
17 needed the Mansion. He wanted the Mansion because that  
18 would be a great place, get better press, he said, so that  
19 he could rollout his product.

20 Q Is he talking about the Governor and Ms. McDonnell's  
21 support of this?

22 A Yeah. He always would say that they support this  
23 project and that we need -- he needs to have this at the  
24 Mansion because they want to have it at the Mansion.

25 Q Now, were you actually involved in the planning of

JERRY KILGORE - DIRECT

2819

1 the Anatabloc event at the Mansion?

2 A I was not.

3 Q Were you invited to the event?

4 A I was not.

5 Q Okay. At this point, after your conversations with  
6 Mr. Eige and Kent and then your conversation with  
7 Mr. Williams -- first of all, I believe you -- your time  
8 sheet says August 12th, 2011. How long after that do you  
9 think that you relayed Mr. Eige and Mr. Kent's message to  
10 Mr. Williams?

11 A I would have tried to call that day. So I would have  
12 reached him that day or the very next day.

13 Q Okay. And from your call with Mr. Williams, let's  
14 ballpark it, August 12th, August 13th, up to August 30th,  
15 did you know whether there was actually going to be an  
16 event at the Mansion?

17 A I did not.

18 Q Okay.

19 A Up until August 29th.

20 Q Okay. Well, let's talk about that. How do you find  
21 out that the event is -- there's going to be an event and  
22 it's going forward at the Mansion on August 30th?

23 A That Mr. Eige, again, calls to say, "Have you seen  
24 this press release that Star wants to put out with the  
25 Governor's statement in it?"

JERRY KILGORE - DIRECT

2820

1 I was like, "I don't know now what you're talking  
2 about." And he was reading it to me. And I said, "Well,  
3 you know, I didn't write it. I didn't" -- "I don't know  
4 anything about this. It's not what they have hired me to  
5 do, but I will call. I will deal with it."

6 And so I called Mr. Williams, who -- to say,  
7 "They're" -- "they're not going to" -- "they don't want  
8 you to put out a statement that the Governor hasn't  
9 approved on your letterhead."

10 Q Okay. And what was his reaction?

11 A Well, he just said he would call in to Star, in to  
12 Star.

13 Q Did you -- well, how certain are you that you talked  
14 to Mr. Williams or Mr. Pokusa about that? I just want  
15 your best recollection.

16 A No. It could have been Mr. Pokusa, because we were  
17 working with him on all the other issues.

18 Q Okay. All right. Did you attend the event at the  
19 Mansion?

20 A I did not.

21 Q After the August 30th, 2011, event at the Mansion,  
22 was -- did you discuss with Mr. Williams whether he wanted  
23 to go forward with the studies at UVA and VTC -- or  
24 Tobacco Commission funding?

25 A We discussed that with Star.

1 Q Okay.

2 A But Mr. Pokusa significantly.

3 Q And what was --

4 A We had another conference call. I mean, we were  
5 trying to move this forward, do a conference call. We had  
6 another conference call in November of that year to sort  
7 of, you know, get moving on the research.

8 Q Well, let me ask you about that. You said originally  
9 that there was like this deadline of August that you  
10 missed.

11 A Right.

12 Q Now you're talking about a conference call in  
13 November. Why didn't you move the ball forward from  
14 August to November?

15 A Well, the August -- you know, Star wasn't ready in  
16 August, and our view was Star wasn't moving forward with  
17 the researchers until that November phone call when we had  
18 a phone call scheduled with the researchers at UVA and  
19 VCU.

20 Q And did you actually participate in that call, sir?

21 A I opted out of that call, and Chris Nolen  
22 participated in the call because it was going to be a  
23 research call.

24 Q Okay. Now, from the time of that call through  
25 February of 2012, what's going on with this grant

JERRY KILGORE - DIRECT

2822

1 application process? Did you make a submission?

2 A We did not. The -- Star is supposed to be working  
3 with the researchers, getting the researchers on board so  
4 that we can submit for the next deadline.

5 Q And were they --

6 A They were not being successful at that time.

7 Q Okay. And in February of 2012, did you discuss the  
8 fact -- did you discuss with Mr. Williams UVA and VCU not  
9 moving the ball forward?

10 A Yes. He was wondering why we weren't moving forward  
11 with the Tobacco Commission, and I said, "Well, UVA and  
12 VCU haven't stepped up to the plate yet. So we can't move  
13 forward."

14 Q And what was Mr. Williams' reaction with UVA and VCU?

15 A Well, he -- he was not happy about that.

16 Q And in that conversation with Mr. Williams, did he  
17 bring up Mr. McDonnell and Ms. McDonnell?

18 A He again reminded me that they supported his research  
19 and they wanted to find a way to help the research.

20 Q From your perspective, if the Governor does support  
21 this idea of the research, as the lobbyist, was that going  
22 to be helpful for you doing what you needed to do?

23 A Well, it's always helpful to have the Governor  
24 support something you're doing as a lobbyist.

25 Q Why?

JERRY KILGORE - DIRECT

2823

1 A Well, I mean, the Governor is the Chief Executive of  
2 the Commonwealth. He has this bully pulpit, if you will,  
3 to go out and talk about issues. Whatever the issue is,  
4 he has the power of that office to go out.

5 Q But to be fair, I mean, the commissioners of the  
6 Tobacco Commission make the decisions on the Tobacco  
7 Commission funding?

8 A Absolutely.

9 Q So why does it matter to you whether you have the  
10 Governor's support?

11 A It's always helpful to have the Governor on the front  
12 of your -- or in your application materials, to say the  
13 Governor supports a project.

14 Q All right. After your conversation with Mr. Williams  
15 about things not moving forward with UVA and VCU, do you  
16 have a subsequent conversation with Mr. Eige about this?

17 A Yes. Yes, I do. Jasen Eige called me about it again  
18 to say that, you know, "I don't think we should be  
19 pressuring UVA and VCU on this research." And I'm like,  
20 "What are you talking about?"

21 And he's again saying, "Well, I've been asked by the  
22 Governor to call and put" -- "you know, show support for  
23 this research, and I'm just" -- "I just don't think we  
24 should be doing it."

25 And I'm thinking, "It's Jasen being Jasen," and just

JERRY KILGORE - DIRECT

2824

1 say, "Well, you know it doesn't hurt to have the  
2 Governor's support for these projects, and we'd like to  
3 have his support for the research."

4 Q Well, I mean, at this point did you see anything  
5 wrong with the Governor supporting the research?

6 A Oh, I thought it would be helpful. I wanted the  
7 Governor's support.

8 Q But there was nothing inherently illegal about the  
9 Governor supporting the research?

10 A Oh, absolutely not. I wouldn't be asking if it were.

11 Q Okay. Fair enough.

12 Did Mr. Eige say that the Governor had asked him to  
13 call you or was he calling you on his own from your call?

14 A He said the Governor had made an inquiry.

15 Q An inquiry of him?

16 A To him, yes.

17 Q What did you tell Mr. Eige -- well, what did you tell  
18 Mr. Eige?

19 A That, you know, "We'd like to have the support. We'd  
20 like to have the Governor's support, that the Governor  
21 can" -- "can voice support with" -- "with any of  
22 Virginia's universities about research he may support."

23 Q Did Mr. Eige specifically ask you to do anything as a  
24 result of his call?

25 A No. Not at that time.

JERRY KILGORE - DIRECT

2825

1 Q But did you have a feeling about what he was hoping  
2 you would do?

3 A Well, I certainly passed it back to -- to Star and  
4 Mr. Williams to say that, you know, the -- that Jasen  
5 isn't confident that the Governor should weigh in here.

6 Q Are you telling Mr. Williams, "Hey, the Governor has  
7 said" -- "personally said he's not going to do this"?

8 A I didn't say the Governor -- no. The Governor didn't  
9 say -- Jasen did not tell me the Governor wasn't going to  
10 do this. Jasen said he was uncomfortable with the  
11 Governor doing it. And I passed that back on to  
12 Mr. Williams.

13 Q Well, what is Mr. Williams' reaction when you tell  
14 him, "Hey, Eige is saying that he's uncomfortable"?

15 A Well, he again said they support his research, and he  
16 would like their help.

17 Q When you're having any of these conversations with  
18 Mr. Eige or Mr. Williams, at any of these points is he  
19 telling you about the things of value that he had given to  
20 the Governor and the First Lady?

21 A No.

22 Q Okay. We can do this fairly quickly.

23 You said that you were --

24 THE COURT: Mr. Dry, are you almost finished?

25 MR. DRY: I think I've got about 15 more

1 minutes, Your Honor.

2 THE COURT: All right.

3 Well, Mr. Kilgore, it looks like you're going to have  
4 to come back tomorrow. Obviously, we've got two  
5 cross-examinations, and you're not even close. So we  
6 might as well look out for the comfort of our jury and  
7 allow you all to leave now.

8 As I've said over and over again, please don't review  
9 any media items regarding this case. Don't allow anyone  
10 to discuss it with you. And you all be safe, and we'll  
11 see you tomorrow morning at -- just a second. Let's make  
12 it 9:45 again. All right.

13 (The jury left the courtroom.)

14 THE COURT: I'm going to go down for about five  
15 minutes and come right back in, and we'll have a hearing  
16 on this -- this witness issue. So I'll be right back.

17 (Recess taken from 5:32 p.m. until 5:39 p.m.)

18 THE COURT: All right. Let's approach this in  
19 this way. I know this is the defendants' motion, but I  
20 think I understand the defendants' position completely.  
21 I'll hear from the government, and then from the  
22 defendants if they feel it's necessary.

23 Government.

24 MR. COOKE: Thank you, Your Honor. I'll try to  
25 be brief. As I understand the defendants' position,

1 particularly through their reply brief, they are  
2 emphasizing the comparison between the testimony --  
3 proposed testimony of Mr. Skunda and Ms. Bridge with that  
4 that was excluded from Mr. Earley.

5 And the testimony is very different. The essence of  
6 Mr. Earley's testimony was to give an opinion about the  
7 legality of conduct, and in particular, the legality of  
8 the McDonnells' conduct, and tell the jury when an  
9 official can be paid personal funds for performing acts  
10 that --

11 THE COURT: Let's save some time. I don't need  
12 to hear that.

13 Tell me what it is that you're going to present  
14 through these witnesses, why it's relevant, and --

15 MR. COOKE: Sure.

16 THE COURT: -- what is fact and what is opinion.

17 MR. COOKE: Okay. I'll start with Ms. Bridge,  
18 who was Mansion director from 2002 to 2010 for Governor  
19 Mark Warner and Tim Kaine. And she could testify about  
20 the types of events that were held at the Governor's  
21 Mansion. She would not be saying what -- she wasn't --  
22 did not have a role in selecting what events would be held  
23 at the Mansion, but she had personal experience and  
24 knowledge about what was done at the Mansion.

25 And that's relevant because under the definition from

1 JEFFERSON and BIRDSALL for an official act, the Fourth  
2 Circuit has a firm instruction that said, "Official acts  
3 include those activities that have been clearly  
4 established by settled practice as part of a public  
5 official's position."

6 And we think it's helpful to the jury to understand  
7 the types of events, meetings, and the promoting a  
8 Virginia business that have been the subject matter of  
9 this case are the types of things that other governors  
10 have done and, therefore, are part of a settled practice  
11 that's been clearly established.

12 I also would emphasize, this is going to be very  
13 short testimony. We expect that both Ms. Bridge and  
14 Mr. Skunda, combined, that their direct examinations would  
15 take less than a half an hour.

16 THE COURT: All right. And Mr. Skunda, what  
17 is -- he's just going to do the same thing?

18 MR. COOKE: Essentially. He was Secretary of  
19 Commerce from 1994 to 1997, and so he would testify about  
20 meetings that were held to promote Virginia businesses and  
21 events.

22 THE COURT: Okay. Thank you.

23 MR. COOKE: Sure.

24 THE COURT: Okay. The McDonnells.

25 MR. BURNHAM: Just very quickly, Your Honor.

1 All I would emphasize is that the reason that Mr. Cooke  
2 gave for this being relevant -- these are not fact  
3 witnesses, of course, since they don't have any personal  
4 knowledge of the facts in this case. And that sounded to  
5 me like classic expert testimony.

6 Other than that, I think the Court understands our  
7 position. So thank you.

8 THE COURT: All right. As to Mr. Skunda, the  
9 defense motion will be granted. As to Ms. Bridge, the  
10 Mansion executive, that motion will be denied.

11 And let me say this as to Skunda. Just so we're  
12 clear, it is possible that the defendants, in putting on  
13 their case, could make Skunda relevant and material. Just  
14 so you know, I mean, if this comes back for rebuttal,  
15 there might be another look at that. But at this point,  
16 I'm not going to allow Skunda and his testimony about the  
17 meetings. All right.

18 (The trial adjourned at 5:43 p.m.)

19  
20  
21  
22  
23  
24  
25

I N D E X

WITNESSES

4 Examination By: Page

5 MARTIN KENT

6 Direct - MR. FAULCONER 2535  
Cross - MR. ASBILL 2593  
7 Cross - MR. BURCK 2630  
Redirect - MR. FAULCONER 2646

8 SARA WILSON

9

10 Direct - MS. ABER 2650  
Cross - MR. BROWNLEE 2659  
Redirect - MS. ABER 2670

11 LISA HICKS-THOMAS

12

13 Direct - MS. ABER 2672  
Cross - MR. BROWNLEE 2677

14 MICHAEL UNCAPHER

15 Direct - MR. HARBACH 2681  
Cross - MR. SMALL 2725  
16 Cross - MR. BURCK 2733  
Redirect - MR. HARBACH 2741

17 SHARON KRUEGER

18

19 Direct - MR. FAULCONER 2748  
Cross - MR. BROWNLEE 2771  
Cross - MR. KOFFMANN 2784  
20 Redirect - MR. FAULCONER 2785

21 JERRY KILGORE

22 Direct - MR. DRY 2786

23

24

25